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Restitution, compensation, satisfaction: transnational reparations and Colombia's Victims' Law

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Introduction

A new law passed by the Colombian government to make reparation to victims of the armed conflict has implications for the approximately 455,000 Colombians who live as refugees, asylum-seekers, or in a refugee-like situation outside the country.¹ Although these vulnerable individuals may be entitled to reparation for human rights violations suffered in Colombia, the ongoing armed conflict impedes their access to this offer. This paper investigates the legal and practical implications of offering such ‘transnational’ reparations to externally-displaced victims (EDVs) in circumstances of protracted armed conflict.²

The new Victims’ Law in Colombia provides for wide-ranging reparation measures to persons who have suffered damages directly as a result of human rights violations or infractions of international humanitarian law (IHL).³ Although refugees and other EDVs do not figure prominently in its provisions, this new legal framework generates a range of wider questions about the positioning of such persons vis-à-vis the offer of reparation from their home country, including:

- To what extent does international law require the home state to address the specific needs of EDVs when designing reparation measures and procedures?
- What are the international law implications of home country reparation to EDVs for third states?
- What is the role of the United Nations High Commissioner for Refugees (UNHCR) – as the international agency mandated with refugee protection - in such processes?
- What does ‘reparation’ mean for refugees and other EDVs, and what are their needs in this regard?
- What are the political consequences of the often tense border dynamics that accompany refugee outflows for the implementation of any reparation measures for EDVs?

By addressing these questions through a Colombian case study, this paper constitutes a first step towards understanding what the provision of reparation may mean for refugees and other displaced persons where the circumstances giving rise to their displacement remain.

¹ The most recent estimate is that, as at the end of 2010, there were 395,600 Colombian refugees and persons in a refugee-like situation and 59,954 Colombian asylum-seekers worldwide (UNHCR, *2010 Global Trends*, Geneva, DPES/UNHCR, June 2011, 42).

² The term ‘externally displaced victim’ (EDV) is not employed as a legal or analytical term of art (nor is it intended to create one), but rather a convenient short-hand to indicate the category of victims who find themselves outside the territorial jurisdiction of the state where the violation was inflicted.

³ Republic of Colombia, *Ley 1448 de 2011 por la cual se dictan medidas de atención, asistencia y reparación integral a las víctimas del conflicto armado interno y se dictan otras disposiciones* (Law 1448 of 2011 by which measures of attention, assistance and full reparation for the victims of the internal armed conflict, and other provisions, are decreed); referred to hereafter as the ‘Victims’ Law’.

Reparations and externally displaced victims

Scholars have recently identified the issue of reparations for refugees and displaced persons as a new area of study.⁴ Nonetheless, this paper connects with an existing body of academic work that has concerned itself with the idea of reparation for refugees. There are several distinctive strands that may be identified within the literature on this wider field. During the 1980s and 1990s a renewed focus emerged within scholarly circles on reparation for refugee flows.⁵

On the one hand, this concerned itself with the idea that the burden incurred by a large flow of refugees provided the host state with the legal grounds to demand reparation from the state that had, by its own action or omission, caused the refugees to leave its territory.⁶ On the other, the notion emerged that the act of being forced to seek refuge on the territory of another state gave rise to an individual right to reparation on the part of the refugee.⁷ The latter concept has been partially reflected in the transitional justice practices of some post-dictatorship Southern cone countries which established reparation programmes for exiles.⁸

A more recent development has been the increasing ubiquity of the discourse of housing, land and property restitution for refugees and other displaced persons.⁹ This

⁴ Wolfson, S., 'Refugees and Transitional Justice', *Refugee Survey Quarterly*, Vol. 24, 2005, pp.55-59; Bradley, M., 'Refugees and the Reparations Movement: Reflections on Some Recent Literature', *Journal of Refugee Studies*, Vol. 20, 2007, pp.662-668; Harris Rimmer, S., 'Reconceiving Refugees and Internally Displaced Persons as Transitional Justice Actors', *New Issues in Refugee Research*, No. 187, April 2010.

⁵ This followed the series of UN General Assembly resolutions on 'International cooperation to avert new flows of refugees'. For instance, *Resolution 36/148*, 16 December 1981, in this series refers both to the 'responsibilities of states with regard to averting new massive flows of refugees' (preamble) and the right of refugees 'who do not wish to return to receive adequate compensation' (paragraph 3). Earlier resolutions had affirmed this right specifically for Palestinian refugees (e.g. *Resolution 194 (III)*, 11 December 1948). After World War II, reparations in the form of collective assistance with rehabilitation and resettlement had also been provided to 'non-repatriable victims' of Nazi persecutions (Rubin, S.J., and Schwartz, A.P., 'Refugees and Reparations', *Law and Contemporary Problems*, Vol. 16, pp.377-394).

⁶ See, for example, Beyani C., 'State Responsibility for the Prevention and Resolution of Forced Population Displacements in International Law', *International Journal of Refugee Law*, Special Issue, 1995, pp.130-147; Tomuschat C., 'State Responsibility and the Country of Origin', in V. Gowlland-Debbas (ed.), *The Problem of Refugees in the Light of Contemporary International Law Issues*, The Hague, Martinus Nijhoff, 1996; Garry H., 'The Right to Compensation and Refugee Flows: A "Preventative Mechanism" in International Law', *International Journal of Refugee Law*, Vol. 10, 1998, pp.97-117. This potential had been identified by the previous generation of scholars, such as Jennings R.Y., 'Some International Law Aspects of the Refugee Question', *British Yearbook of International Law*, Vol. 20, 1939, pp.98-114.

⁷ See, for instance, Lee L.T., 'The Right to Compensation: Refugees and Countries of Asylum', *American Journal of International Law*, Vol. 80, 1986, pp.532-567; International Law Association, 'Declaration of Principles of International Law on Compensation to Refugees', *International Law Association Conference Reports*, Vol. 65, 1992 (Cairo), pp.424-445.

⁸ For a description of these programmes, see Guembe, M.J., 'Economic Reparations for Grave Human Rights Violations: The Argentinean Experience' and Lira, E., 'The Reparations Policy for Human Rights Violations in Chile', both in de Greiff, P. (ed.), *The Handbook of Reparations*, Oxford, OUP, 2006.

⁹ Among the extensive literature two relevant examples are the chapters in Leckie, S. (ed), *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons*, Ardesley, N.Y., Transnational Publishers, 2003; and Leckie, S. 'Housing, Land and Property Rights in Post-Conflict Societies', *Legal and Protection Policy Research Series*, Geneva, PPLA/UNHCR, March 2005.

gained ground through the 1990s and 2000s, not least as a result of the desire among sectors of the international community to halt and reverse ‘ethnic cleansing’ in the Balkan region.¹⁰ It has given refugees and other displaced persons centre stage as rights holders in the reparation context. It has translated into the adoption of a soft-law framework on ‘Housing and Property Restitution for Refugees and Displaced Persons’ (‘The Pinheiro Principles’) in 2005,¹¹ and national laws such as those which established the Iraqi Property Claims Commission.¹²

However, this approach deals only with a limited range of property-based rights rather than the much broader range of violations to which such persons may have been subject in their home country. Moreover, this body of literature concentrates on restitution in post-conflict scenarios, or as an aspect of transitional justice, a standpoint which is not necessarily applicable to situations of unresolved armed conflict such as Colombia.

The conceptual underpinnings of the present analysis therefore depart from those of the existing literature on reparation for refugees and displaced persons in several crucial respects. Firstly, the study adopts a victim-centred approach in which its subjects are defined primarily by their status as victims of rights violations rather than, for example, by reference to their need for international protection. This also allows us to treat as a secondary consideration more complex questions concerning whether reparation is due to a person for ‘being made a refugee’. Secondly, the study looks beyond restitution for the violation of property-based rights to consider reparation for the gamut of serious rights violations. This is logical since, from the legal point of view, property restitution is merely a sub-set of these wider questions.

Finally, these questions are posed against the backdrop of persisting armed conflict in the home country, rather than in relation to the post-conflict or transitional era. For persons who are refugees or otherwise in need of international protection, this implies that the conditions that gave rise to their displacement may remain, a fact that brings with it both legal and practical consequences.

Colombia as a case study

Colombia represents an important case for the study of reparations to externally displaced victims. On the formal level, it is a party to all the major international human rights treaties in the Americas that may have a bearing on questions of reparation,¹³ as well as the core refugee protection instruments.¹⁴ These treaties form

¹⁰ On this issue, see Cantor, D.J. *The Return of Internally Displaced Persons: International Law and its Application in Colombia*, Leiden, Martinus Nijhoff, forthcoming.

¹¹ UN Sub-Commission on the Promotion and Protection of Human Rights, *Report of the Special Rapporteur on Housing and Property Restitution*, U.N. Doc. E/CN.4/Sub.2/2005/17, 28 June 2005, Annex. For a critical commentary, see Anderson, M.J., ‘The UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (the Pinheiro Principles): suggestions for improved applicability’, *Journal of Refugee Studies*, Vol. 24, 2011, pp.304-322.

¹² On these laws and institutions, see Van der Auweraert, P., ‘Policy Challenges for Property Restitution in Transition: The Example of Iraq’, in Ferstman, C., et al. (eds.), *Reparations for Victims of Genocide, War Crimes and crimes Against Humanity: Systems in Place and Systems in the Making*, The Hague, Brill, 2009.

part of the constitutional bloc of Colombia, where they are given precedence over other sources of domestic law.¹⁵

However, alongside this developed legal framework, Colombia is also currently the only American state to produce a significant number of refugees and, as such, is the focus of regional refugee initiatives such as the 2004 Mexico Declaration and Plan of Action. Most importantly, it has just adopted a lengthy and detailed Victims' Law, which makes it one of the first countries to attempt to provide reparation to victims of violations of human rights law and IHL in the absence of a transition from the circumstances of their violation (whether to post-conflict or democratic governance).

The relative novelty of the present topic has presented analytical challenges which have required recourse to a range of different sources. 'Traditional' legal research methods have been used to delineate the international law framework on this topic through analysis of applicable treaty provisions and the tendencies in the practice of those international and national instances tasked with their legal interpretation.

However, Colombian refugees remain relatively 'invisible', not only in political terms but also in the academic literature, particularly in comparison with the copious body of work concerning internally displaced persons in Colombia.¹⁶ Moreover, the lack of data specifically on the practical aspects of reparation for EDVs from Colombia has translated into an imperative for field-based research on this topic. The application of social science methodology during the course of this research - and the issues that this raises - requires brief explanation here.

In order to gain an understanding of how Colombian EDVs understand the issue of reparation, and the consequences of an offer of reparation by Colombia at the bilateral level, it was necessary to identify an appropriate sample for the study. Although there are relatively sizeable populations of Colombian refugees in the United States of America (25,607), Canada (16,054) and Costa Rica (10,214), the vast majority of Colombians in need of international protection are located in Venezuela (201,467), Ecuador (120,403) and Panama (15,432)¹⁷. As a majority of Colombian refugees and persons in need of international protection are located in these three neighbouring countries, they have accordingly been selected to constitute the populations on which this study will focus.

However, in Ecuador, Panama and Venezuela, only a relatively small proportion of Colombians in need of international protection have formal protection in the form of refugee status (or complementary protection in Panama).¹⁸ The fact that a large

¹³ Colombia ratified the 1966 International Covenant on Civil and Political Rights on 29 October 1969 and the 1969 American Convention on Human Rights on 28 May 1973.

¹⁴ Colombia ratified the 1951 Refugee Convention on 10 October 1961 and its 1967 Protocol on 4 March 1980. It is signatory to the 1984 Cartagena Declaration, which it applies in its national law through Republic of Colombia, *Decreto 4503 de 2009* (Decree 4503 of 2009).

¹⁵ 1991 Political Constitution of Colombia, Article 93.

¹⁶ Gottwald, M., 'Protecting Colombian Refugees in the Andean Region: The Fight against Invisibility', *International Journal of Refugee Law*, Vol. 16, 2004, pp.517-546.

¹⁷ Figures as at end of 2010 (UNHCR, *2010 Global Trends*, Annex, Table 5). In addition, there are also substantial numbers of Colombian asylum-seekers awaiting decisions on their claims in both Venezuela (15,694) and Ecuador (39,744) (ibid, Table 12).

¹⁸ As at the end of 2010, the number of recognised refugees, as a proportion of the total number of Colombians in need of international protection or awaiting a decision on their asylum claim, remained

proportion of EDVs are undocumented, combined with the difficulties of identifying and accessing this vulnerable population, meant that it would have been extremely complicated within the time and resources constraints of the study to establish a sampling frame necessary for a randomised sample. In view of these considerations, the study instead used non-randomised sampling techniques to identify respondents, who were then interviewed individually or in small groups using semi-structured interviews. Whilst this methodology does not permit firm quantitative conclusions to be drawn, it is hoped that the research serves to identify some of the major themes in this area.

In the course of the research, 145 interviews were conducted with 190 refugees, asylum-seekers, other externally-displaced Colombians, and officials from governmental bodies and humanitarian organisations dealing with refugee issues. The interviews with EDVs were carried out across nine regions of these three countries, primarily in the capital cities and frontier zones bordering on Colombia.¹⁹

Overall, the EDV respondents demonstrated a good degree of variation in age, gender, previous professional profile, migratory status within the host country, and place of origin within Colombia. Nonetheless, the majority were accessed through local offices of organisations working with these populations, indicating a potential bias within the data towards persons disposed to make contact with such organisations. Efforts were made wherever possible to correct such bias by triangulating this data with information from other sources.

This paper addresses the research questions set out at the start of the paper in the following way. It begins by delineating the international law framework that circumscribes national law on the topic of reparation for externally displaced victims, starting with the duties of the state where the violation was inflicted, before turning to the implications for the other state where that victim now finds herself (the host state). Whether UNHCR has a legitimate interest in such questions is also canvassed.

The compatibility of provisions of the Victims' Law with the international law is simultaneously assessed. Against this backdrop, the data from the fieldwork with Colombian EDVs is then presented and analysed, illustrating how such populations frame and engage with the concept of reparation from outside the borders of their own country. Finally, the analysis shifts gear again to explore the implications of the offer of reparation to EDVs for international relations between Colombia, as the inflicting state, and neighbouring host states. It concludes by drawing together the strands of the analysis, and suggesting a way forward.

small (combined figures from UNHCR, *2009 Global Trends*, Geneva, DPES/UNHCR, June 2010, Annex, Table 5 and *2010 Global Trends*, Annex, Table 12): Ecuador – 26,650 (16.64per cent); Venezuela – 1,349 (0.62per cent); Panamá – 1,392 (8.90per cent).

¹⁹ In Ecuador, interviews were carried out in the capital city, Quito, and in the provinces of Sucumbíos, Esmeraldas and Santo Domingo de los Tsachilas. In Panamá, interviews were undertaken in the capital, Panamá City, and the Darién province. In Venezuela, interviews were conducted in the capital city, Caracas, and in the regional states of Apuré and Táchira.

Reparation for violations of international law

Reparation is an established concept in international law.²⁰ The International Law Commission has described the legal consequences of a state breaching its international obligations in terms of duties to *continue performing* the obligation breached, *cease* the internationally wrongful act and ensure its *non-repetition*, and *repair* its effects upon the injured state.²¹ The ‘full reparation’ required by this last duty should take the form of:

- Restitution - insofar as it is not impossible or does not impose a disproportionate burden upon the responsible state, that state must restore the situation that existed prior to its internationally wrongful act; and/or
- Compensation - insofar as any *damage* caused by the internationally wrongful act is not made good by restitution, the responsible state is under a duty to repair the damage through payments; and/or
- Satisfaction - insofar as any *injury* caused by the internationally wrongful act is not made good by restitution and/or compensation, the responsible state must take measures to afford satisfaction to the injured state.²²

Leaving aside the issue of reparations towards injured states, the question here is whether international law requires ‘reparation’ to be made to natural persons who have suffered as a result of a state breaching its duties under international human rights law or IHL.

Within international human rights law, many core treaties require states parties to provide, within their domestic sphere, an effective remedy to individual rights-bearers in case of violation of their protected rights.²³ If this domestic remedy is not effective in a particular case, the victim may also have the capacity to have the merits of her complaint determined by the relevant treaty body.²⁴

²⁰ See, for example, Permanent Court of International Justice, *Chorzow Factory (Indemnity) Case (Germany v Poland)*, Judgment of 13 September 1928. This does not, however, mean that the legal construction of this concept is not subject to substantial dispute (see, by way of a topical example on war reparations, D’Argent, P., *Les réparations de guerre en droit international public: la responsabilité internationale des États à l’épreuve de la guerre*, Brussels, Emile Bruylant, 2002).

²¹ See International Law Commission, ‘Responsibility of States for Internationally Wrongful Acts’, *Yearbook of the International Law Commission 2001*, U.N. Doc. A/CN.4/SER.A/2001/Add.1 (Part 2), New York and Geneva, UN, 2007, pp.26-143; text of the adopted Articles appended to UN General Assembly, *Resolution 56/83*, 12 December 2001, Articles 28-31.

²² *Ibid.*, Articles 34-37.

²³ See, for example, 1966 International Covenant on Civil and Political Rights (ICCPR), Article 2(3); 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 13; 1969 American Convention on Human Rights (ACHR), Article 2, 25; 1981 African Charter on Human and Peoples’ Rights (ACHPR), Articles 2 and 7.

²⁴ For the above treaties, these are ICCPR 1966 Optional Protocol I, Articles 1-2; ECHR (as amended), Articles 34-35; ACHR, Articles 44-47; ACHPR, Articles 55-56. Certain human rights treaty bodies exercise express or implied powers to order or recommend that a state make reparations where it is found to have been in breach of its international obligations. For the above treaties, the relevant bodies and the provisions in which these powers are rooted are the Human Rights Committee (HRC) (ICCPR OPI, Article 5(4)), European Court of Human Rights (ECtHR) (ECHR, Article 41), Inter-American Commission (ACHR, Article 51) and Court of Human Rights (IACtHR) (ACHR, Article 63), and African Commission on Human and Peoples’ Rights (AComHPR) (ACHPR, Articles 55-56).

The jurisprudence of these human rights treaty bodies has developed our understanding of the scope of the obligation upon states parties to provide an effective remedy for human rights violations. It suggests that this duty comprises a *procedural* element, in the sense of a requirement to provide processes by which claims of rights violations can be heard, and a *substantive* element, to ensure that the outcome of the proceedings provides relief to a claimant whose rights have been violated. This substantive element has been further interpreted by reference to the wider regime of state responsibility, such that a state is required to continue to perform its human rights obligations, cease the violation and ensure its non-repetition, and afford reparation to the individual for the effects of the violation.

The reparation framework for violations of IHL is rather different. Some treaties specifically require states to make compensation for breaches of the laws of war during international armed conflicts.²⁵ However, individuals have not been attributed with the procedural rights to enforce such reparations,²⁶ so that payment to individual victims of any compensation awarded in inter-state fora remains a matter for state discretion as far as international law is concerned.²⁷

However, no rule of international law prevents states from making reparation to individual victims of IHL violations in international or non-international armed conflicts. Moreover, since serious IHL violations often also constitute gross human rights violations, a procedural and substantive remedy for such acts will in any event usually be required by international human rights law.²⁸

The Colombian Victims' Law provides individual reparations for serious violations of both bodies of law through adopting a basic definition of 'victims' as:

Those persons who individually or collectively have suffered damages because of events that occurred prior to 1 January 1985 as a consequence of infractions of International Humanitarian Law or

²⁵ Hague Convention (IV) Respecting the Laws and Customs of War on Land, Article 3; 1977 Geneva Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, Article 91.

²⁶ Despite evidence to suggest that the original goal of these provisions was to provide for reparation to injured individuals (Pisillo Mazzeschi, R., 'Reparation Claims by Individuals for State Breaches of Humanitarian Law and Human Rights: An Overview', *Journal of International Criminal Justice*, Vol. 1, 2003, pp.339-347).

²⁷ See, for example, Ethiopia Eritrea Claims Commission, *Final Award: Ethiopia's Damages Claims*, 17 August 2009, paragraph 110. At best, some mixed arbitral tribunals established as part of post-war settlements have accorded to individuals a right to invoke reparation for 'claims arising out of war' between the belligerent states, but not for breaches of IHL as such (Gillard, E., 'Reparation for Violations of International Humanitarian Law', *International Review of the Red Cross*, Vol. 85, No. 851, 2003, pp.529-552). Indeed, one of the most controversial aspects of the soft-law 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' (adopted by UN General Assembly, *Resolution 60/147*, 21 March 2006, Annex) is the claim of a right to an individual remedy for gross violations of IHL.

²⁸ Droege, C., 'The Interplay between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict', *Israel Law Review*, Vol. 40, 2007, pp.310-355.

serious and manifest violations of Human Rights law, as a result of the internal armed conflict.²⁹

The law then proceeds to provide for a series of measures to which victims are entitled, the object of which is to make possible ‘the enjoyment of their rights to truth, justice and reparation with the guarantee of non-repetition’.³⁰

The Victims’ Law expressly frames the right to ‘full reparation’ as encompassing measures of ‘restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition’.³¹ Each of these reparation measures is further elaborated in ‘Title IV: Reparation of the Victims’ of the law. For instance, Chapters II-VI detail the measures of ‘restitution’, including restitution of lands and housing, and access to training and work. Chapter VII deals with ‘compensation’ via administrative mechanisms.

Measures of ‘rehabilitation’, ‘satisfaction’ and ‘guarantees of non-repetition’ are set out in Chapters VIII, IX and X. Chapter XI provides for the implementation of a collective reparation program. ‘Title III’ of the law sets out separate measures on ‘Humanitarian Aid, Attention and Assistance’ to victims, including a chapter dedicated to ‘assistance to victims of forced displacement’. However, these additional measures of assistance have a purely ‘complementary’ character and cannot substitute for reparation.³² Finally, the law creates the bare bones of the institutional machinery to implement these measures.³³

Reparation of victims outside the inflicting state’s territory

We have seen that the duty upon states to provide an ‘effective remedy’ to individuals who have been the subject of human rights violations provides a strong basis for a holistic concept of reparation. Nonetheless, for persons who find themselves outside the territory of the state where the human rights violation occurred, certain questions arise: does the duty to provide an effective remedy continue after the person has left the territory of the state? If so, what is the nature of any state duty to facilitate access to the procedural element of the effective remedy for such persons, and how should the substantive remedy of reparation be assessed? The present section seeks to respond to these questions by delineating the international law framework that governs reparation by an inflicting state to externally displaced victims.

Persistence of the duty to provide an effective remedy

As a matter of human rights treaty law, a state will usually only be responsible for respecting, protecting and fulfilling the human rights of those persons subject to its

²⁹ Article 3. Note that this same article clarifies this ‘victim’ definition through a series of extensions and exclusions.

³⁰ Article 1.

³¹ Article 25.

³² Article 25.

³³ Titles V-VI.

jurisdiction.³⁴ Reflecting wider international law principles, ‘jurisdiction’ in this sense is understood as being ‘primarily territorial’.³⁵ Where a state fails in its obligation to respect or ensure the human rights of a person subject to its jurisdiction, does the duty upon that state to provide an effective remedy cease should the victim subsequently leave its jurisdiction?

The answer is negative. As a matter of principle, the duty to provide an effective remedy arises as a result of the human rights violation – so long as this occurs under the jurisdiction of the state, the duty to provide an effective remedy exists. There is nothing to suggest that this requirement disappears or is suspended should the victim leave the jurisdiction of the state.

Indeed, the structure of the ICCPR clearly indicates that the effective remedy obligation is not limited by the jurisdictional clause.³⁶ If this were not the case, a state could circumvent domestic challenges to human rights violations simply by displacing the victim from the country, an interpretative result contrary to the ‘effectiveness’ and ‘complementarity’ principles underlying the international human rights law framework.

The practice of the relevant human rights treaty bodies provides further evidence that the departure of the victim from the territorial jurisdiction of the responsible state in no way derogates from its duty to provide an effective remedy. Positive precedent exists in the decisions adopted by these international bodies on petitions from persons claiming to have been victims of human rights violations within one state but who found themselves in the territory of another state by the time of the petition and/or the decision.

For example, in the case of *Jiménez v Colombia*, the petitioner fled Colombia following attacks on his person and death threats and received refugee status in the UK.³⁷ Finding that the petitioner’s human rights had been violated in Colombia, the Human Rights Committee expressly held that:

In accordance with article 2, paragraph 3 (a), of the Covenant, the state party is under an obligation to provide Mr. [Jiménez] with an *effective remedy*, including compensation, and to take appropriate measures to protect his security of person and his life *so as to allow him to return to the country*.³⁸

This understanding that the duty to provide an effective remedy persists regardless of the subsequent physical location of the victim is evident also in judgments on similar facts by the Inter-American Court,³⁹ and the African Commission.⁴⁰ Furthermore,

³⁴ See, for example, ICCPR, Article 2(1); ECHR, Article 1; ACHR, Article 1. One exception might be the qualified human rights treaty law duty to readmit the state’s own nationals (e.g. ICCPR, Article 12(4)).

³⁵ International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, paragraph 109; ECtHR (Grand Chamber), *Al-Skeini and Others v UK*, Judgment of 7 July 2011, paragraph 131.

³⁶ Article 2(3) is not subject to Article 2(1).

³⁷ HRC, *Jiménez Vaca v Colombia*, Decision of 25 March 2002.

³⁸ *Ibid*, paragraph 9, emphasis added.

³⁹ See, for instance, IACtHR, *Urrutia v Guatemala*, Judgment of 27 November 2003; *Moiwana Community v Suriname*, Judgment of 15 June 2005.

there appears to be no contrary international practice that would suggest that the duty to provide an effective remedy ceases once the alleged victim has left the territorial jurisdiction of the responsible state.

In this respect, it may be noted that the Victims' Law in Colombia does not expressly refer to EDVs in its Article 3 'victim' definition, nor are they listed among the populations benefitting from a differential focus in Article 13:

such as women, youths, children, elderly persons, disabled persons, peasants, social leaders, trade union members, human rights defenders and victims of forced displacement.

However, this should not lead to the conclusion that EDVs are excluded from its ambit. Crucially, Article 3 contains no territorial limitation and does not appear to exclude EDVs who otherwise meet the definition from being 'victims' for the purposes of the law.⁴¹ Moreover, the list of groups benefitting from a differential focus in Article 13 is clearly non-exhaustive ('such as') and, in any event, includes 'victims of forced displacement', a category which incorporates those outside the country.⁴²

Conclusively, other substantive provisions explicitly provide for victims located outside Colombian territory even if they are not 'victims of forced displacement'.⁴³ The conclusion is that the Colombian Victims' Law expresses – albeit somewhat implicitly in places – the duty to provide an effective remedy to EDVs for violations of human rights law.

The paper now turns to consider the legal implications of the persistence for EDVs of the effective remedy requirement in terms of its procedural and substantive elements.

Procedural element of reparation

The procedural element of the effective remedy rule implies a process within the domestic legal order in which applicants can raise 'arguable claims' of a human rights violation and have them considered.⁴⁴ For serious human rights violations, the state has an *ex officio* duty to investigate without the need for victims to denounce.⁴⁵

⁴⁰ See, for instance, AComHPR, *Union Inter Africaine des Droits de l'Homme et al. v Angola*, Decision of 11 November 1997, concluding declaration; *Malawi African Association et al. v Mauritania*, Decision of 11 May 2000, concluding declaration and recommendations; *African Institute for Human Rights and Development v Guinea*, Decision of 7 December 2004, concluding findings and recommendations.

⁴¹ Whether victims of IHL violations committed outside the jurisdiction of the Colombian state as a result of the armed conflict (e.g. in the territories of other states) may also be covered by the definition is an open question.

⁴² See Article 66(2) which explicitly refers to duties in relation to 'victims of forced displacement who find themselves outside the national territory'.

⁴³ See Article 204.

⁴⁴ ECtHR (Grand Chamber), *Rotaru v Romania*, Judgment of 4 May 2000; also *Hatton v UK*, Judgment of 8 July 2003, paragraph 140. Note that the effective remedy provisions of the Convention Against Torture are triggered at a lesser threshold by the 'mere allegation' of torture, reflecting the seriousness of the act of torture and the importance of the protected interest (Nowak, M., and McArthur, E., *The United Nations Convention Against Torture: A Commentary*, Oxford, OUP, 2008, p.448).

⁴⁵ IACtHR, *Sánchez v Honduras*, Judgment of 7 June 2003, paragraphs 127 and 132.

Although the remedy provided by the state need not be judicial in nature, it ‘must be effective in practice as well as in law’,⁴⁶ such that more fundamental rights require more stringent remedies.⁴⁷ As regards any remedial proceedings that do have a judicial character, the right of access to a court for the determination of a particular civil issue is inherent in the closely-related right to a fair trial.⁴⁸ Any state restrictions to the exercise of this right must pursue a legitimate aim and not be so wide-ranging as to destroy the essence of the right.⁴⁹

How then do these principles apply to the question of access to an effective remedy by EDVs? Certain different aspects of the topic may be identified. Firstly, where a state establishes a reparation programme, is it required to make EDVs aware of this fact? Secondly, must a state facilitate the return of EDVs to the national territory in order to participate in reparation proceedings? Thirdly, to what extent must a state facilitate participation in reparation proceedings from overseas? The paper turns to consider these separate questions in turn.

On the first question, the effectiveness element of the effective remedy requirement strongly suggests that information on a reparations programme and its procedures must be disseminated by the responsible state to all relevant constituencies, which would include EDVs. In this regard, the Pinheiro Principles expressly recommend that such information be ‘made readily available’, including in ‘countries of asylum or countries to which [victims] have fled’.⁵⁰

The obligatory nature of such awareness-raising among EDVs is further reflected in the decisions of international bodies, which stress that reasonable measures must be taken to ensure that EDVs are aware of the reparation process and that any time-limits must not disadvantage such persons.⁵¹ Indeed, any purported exclusion of EDVs would have to be very carefully justified against the fundamental principle of non-discrimination.⁵² The Colombian Victims’ Law correctly follows existing international practice by requiring the Ministry of External Relations to guarantee that EDVs are ‘adequately informed and oriented about their rights, means and recourses’ under that law.⁵³

These same principles of effectiveness and non-discrimination suggest that EDVs should have access to reparation proceedings. In some cases this will be predicated upon return by the EDV in order to engage directly with in-country proceedings. In terms of negative obligations, even on the narrowest treaty constructions of the human right to return one’s own country, state discretion to refuse to readmit nationals for

⁴⁶ ECtHR, *Conka v Belgium*. Judgment of 5 February 2002, paragraph 75.

⁴⁷ Note that for serious violations of fundamental rights, an obligation to carry out a ‘thorough and effective investigation’ has also been understood to derive independently from the rights themselves (see, for example, ECtHR, *Aksoy v Turkey*, Judgment of 18 December 1996, paragraph 97).

⁴⁸ ECtHR, *Golder v UK*, Judgment of 21 February 1975. See, for example, ICCPR, Article 14; ECHR, Article 6, ACHR, Article 8, ACHPR, Article 7.

⁴⁹ ECtHR, *Ashingdane v UK*, Judgment of 28 May 1985.

⁵⁰ Principle 13(4).

⁵¹ See, for example, Human Rights Chamber for Bosnia and Herzegovina, *Ivica Kevešević v The Federation of Bosnia and Herzegovina*, Judgment of 10 September 1998, paragraph 55.

⁵² See ICCPR, Article 2(1); ECHR, Article 14; ACHR, Article 1(1); ACHPR, Article 2.

⁵³ Article 204.

these purposes cannot be exercised on arbitrary grounds.⁵⁴ Refusal on the basis of a person's intention to make a human rights complaint would be unlawful as a result of its arbitrary and discriminatory character.

Even for non-nationals, a state cannot put unreasonable obstacles in the way of persons who seek to return to the country purely in order to participate in court proceedings as protected under Article 14 ICCPR.⁵⁵ Whilst this reasoning should apply equally to the effective remedy rule for non-national EDVs, the existence or establishment of accessible effective remedies from outside the country might permit a state to lawfully refuse to readmit a non-national EDV seeking entry on this basis.

An alternative scenario is where victims access reparation procedures from outside the country. In particular, victims of serious human rights violations may not wish to return to the state where the violation was inflicted, whether due to an ongoing fear of persecution or other considerations. In some instances, such persons may be able to access the procedures through a proxy acting in-country - whether a legal representative or a family member - or by post. For property restitution, the Pinheiro Principles recommend that states consider this procedure to 'facilitate the greatest access to [victims]'.⁵⁶ Otherwise, the responsible state may utilise its diplomatic and/or consular services to provide reparation procedures.

At least for gross violations of human rights law or IHL, the Basic Reparation Principles advise that states make available 'all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to a remedy'.⁵⁷ The Pinheiro Principles go further in counselling the establishment of restitution claims-processing offices 'throughout affected areas where potential claimants currently reside'.⁵⁸

It can be concluded that should a state fail to provide EDVs with an appropriate form of access to reparation procedures it risks violating its duty to provide an effective remedy. Conversely, this also has important procedural implications should the EDV proceed to petition the competent international human rights treaty bodies.⁵⁹ Moreover, whilst states appear to have a broad discretion in choosing which procedure(s) to offer to EDVs, the effectiveness of each type as a remedy requires careful consideration in the particular context.

For instance, permitting a postal application may be an effective remedy for certain property-related violations, but inadequate for human rights violations that require more complex forms of engagement with the victim. Similarly, permitting return in order that the EDV participate in the reparation proceedings may not be effective if her safety would thereby be placed in jeopardy. In this situation, the Human Rights

⁵⁴ See ICCPR, Article 12(4); ECHR Protocol IV, Article 3(2); ACHR, Article 22(5); ACHPR, Article 12(2).

⁵⁵ HRC, *Ben-Said v Norway*, Decision of 29 March 2000.

⁵⁶ Principle 13(5).

⁵⁷ Principle 12(d).

⁵⁸ Principle 13(5).

⁵⁹ The AComHPR does not require refugees to exhaust domestic remedies in the country of origin before it examines the merits of a petition (see, for example, *Rights International v Nigeria*, Decision of 15 November 1999, paragraph 24; *African Institute for Human Rights and Development v Guinea*, paragraph 35).

Committee has required that a state take individualised measures ‘to protect [the victim’s] security of person and his life so as to allow him to return to the country’.⁶⁰ This last example ties in closely to the substantive aspect of the effective remedy rule.

Unfortunately, ambiguity exists within the Victims’ Law of Colombia as to the mechanisms that will allow EDVs to accede to reparations. Yet, since EDVs are not excluded from the definition of ‘victims’ in Article 3 they presumably possess the same procedural rights as other victims. These include rights to ‘participate in the formulation, implementation and monitoring of the [reparation] policy’,⁶¹ and to ‘know the state of judicial and administrative processes... in which they have an interest as parties or interveners’.⁶²

Within judicial processes, victims also have rights to be heard, to seek proof and to submit evidence⁶³ - any testimony can be given in person or by audio-visual means,⁶⁴ particularly where the person lacks the means to attend hearings.⁶⁵ A restructuring of the *Defensoría del Pueblo* (Public Ombudsman’s Office) will take place in order to provide legal representation to any victims who request it.⁶⁶ Even though the reference in Article 204 to orienting EDVs on their ‘means and recourses’ suggests that special access mechanisms are envisaged, these are not further developed on the face of the law.

Substantive element of reparation

For the substantive element of reparation, the question remains as to what form this should take for externally displaced victims who may not be able to return. The 1992 ILA Cairo Declaration provides one early formulation on this subject of ‘compensation to refugees’ that narrowly concentrates on the state of origin’s direct or indirect forcing of a citizen from her homelands as an act that violates the person’s

full and effective enjoyment of all articles in the Universal Declaration of Human Rights that presuppose a person’s ability to live in the place chosen as home.⁶⁷

The Cairo Declaration thus focuses exclusively upon the reparation for rights violated by being forced to leave one’s own country. It leaves to one side questions regarding reparation for other atrocious acts that may have preceded the person’s flight into exile. Nonetheless, both these strands are evident in the more recent jurisprudence of leading human rights treaty bodies.

⁶⁰ HRC, *Jiménez Vaca v Colombia*, paragraph 9.

⁶¹ Article 28(5).

⁶² Article 28(11). On the rights of victims within judicial proceedings, see also Articles 35-36.

⁶³ Article 37.

⁶⁴ Article 40.

⁶⁵ Article 44.

⁶⁶ Article 43.

⁶⁷ International Law Association, ‘Compensation to Refugees’, Principle 2. This follows the understanding of the human rights implications of expulsion set out in International Law Association, ‘Declaration of Principles of International Law on Mass Expulsion’, *International Law Association Conference Reports*, Vol. 62, 1987 (Seoul), pp.542-559.

The Cairo Declaration affirms that ‘adequate compensation’ is owed to refugees ‘who do not wish to return’,⁶⁸ implying that the primary duty upon the responsible state is to facilitate return by refugees. This emphasis upon return is shared by more recent treaty body jurisprudence on cases involving EDVs. Here, the *restitution* ordered often includes measures to facilitate return by the victim,⁶⁹ both by ensuring the safety of the person and by helping the sustainability of any return (for instance, by providing collective title to lands and establishing a development fund for returnees in cases of mass displacements).

The Victims’ Law of Colombia is also on all fours with this point, containing a whole chapter that deals in considerable detail with restitution of land to victims who lost their lands as a result of the armed conflict.⁷⁰ Programmes to assist ‘victims of forcible displacement’ to return to their homes, or resettle elsewhere in Colombia, are also provided for,⁷¹ with regulations envisaged to ensure that victims of forced displacement who are outside the territory are included in these programmes.⁷²

Measures of restitution may also encompass the medical and psychological treatment required for the *rehabilitation* of victims. Where the victim remains in the country where the violation was inflicted, the Court has established that the responsible state must provide necessary medical and psychological treatment free of charge.⁷³ However, it implicitly recognises that refugees and other EDVs may not be in a position to return to the country of origin to access such treatment.⁷⁴

In such cases, it has required the state to deposit in a bank account indicated by the victim a specified sum of money ‘so that said money may help them with that treatment’ in the country of residence. To receive these funds such victims must not only prove that they reside abroad but also that they need to receive medical or psychological treatment.⁷⁵ The latter condition can be proved without returning to the country of origin, through ‘objective and reliable means’, such as a medical certificate authenticated before a notary public or a diagnosis issued by the Medical Association of the country of residence.⁷⁶ Chapter VIII of the Colombian Victims’ Law establishes measures of ‘rehabilitation’ in the form of a territorial program of psychosocial attention and integral health, but contains no provision for overseas victims.

The Human Rights Committee in *Jiménez v Colombia* ordered *compensation* to be paid to an EDV.⁷⁷ On the substance of the complaint, the Committee held that the

⁶⁸ Ibid, Preamble; see also Principle 5.

⁶⁹ HRC, *Jiménez Vaca v Colombia*, paragraph 9; IACtHR, *Moiwana Community v Suriname*, paragraph 209-215; AComHPR, *Malawi African Association v Mauritania*, concluding declaration and recommendations; *John D Ouko v Kenya*, Decision of 6 November 2000.

⁷⁰ See Title IV, Chapter III (Land Restitution).

⁷¹ Article 66. Note that these are defined as measures of ‘attention’ rather than ‘reparation’ (Title III, Chapter III (Attention to Victims of Forced Displacement)).

⁷² Article 66(2).

⁷³ IACtHR, *The Miguel Castro-Castro Prison v Peru*, Judgment of 25 November 2006, paragraph 449.

⁷⁴ Ibid, paragraph 450. This applies not only to refugees vis-a-vis the country of origin, but also to aliens deported from the territory of the inflicting state and for whom return would not be appropriate (see IACtHR, *Vélez Loor v Panamá*, Judgment of 23 November 2010, paragraphs 263-264).

⁷⁵ Ibid, paragraph 450.

⁷⁶ Ibid, paragraph 433(c)(vii)

⁷⁷ HRC, *Jiménez Vaca v Colombia*, paragraph 9.

petitioner's right to security of person was violated in Colombia and he could not return safely to that country.

[Colombia] has not ensured [Mr. Jiménez] his right to remain in, return to and reside in his own country [Article 12(1) and (4)]. This violation necessarily has a negative impact on the author's enjoyment of the other rights ensured under the Covenant.⁷⁸

The Committee's finding that involuntary exile implicates the state of origin in a violation of the right to choice of residence - and thereby a violation of all other rights predicated upon living under the state's jurisdiction - replicates the reasoning underpinning the Cairo Declaration. This decision has subsequently been followed elsewhere.⁷⁹ Nonetheless, the extant jurisprudence contains no examples of a state being held responsible for the violation of this right absent a nexus with other serious rights violations as the direct cause of a person's flight. This suggests that refugees and other EDVs who have not been subject to such violations may have difficulty showing a violation of this right, and hence qualifying for compensation.

Nonetheless, it appears that the Inter-American Court awards compensation for certain pecuniary and non-pecuniary damages that arise as the result of a victim of serious human rights violations fleeing her country. In respect of non-pecuniary damages, the Court holds that human rights violations in Guatemala against a petitioner who fled as a refugee to Mexico

resulted in a change in the normal course of [her] life, because, following the facts, she was forced to leave the country and remain far from her family, which caused her anguish and sadness.⁸⁰

This leads the Court to award compensation for 'life disruption' and 'family separation' not only to the petitioner but also her family members remaining in Guatemala.⁸¹ These same elements have also founded similar compensation awards for non-pecuniary damages in other cases.⁸² Substantial non-pecuniary damages have also been awarded to EDVs by the Court for the disintegration of the social fabric of a tribal community that resulted from its inability to obtain from the state adequate conditions for return.⁸³ Thus, to the extent that the victim's flight from the state leads to personal, family and/or social disruption, these considerations should be taken into account when awarding compensation for non-pecuniary damages to EDVs.

The jurisprudence of the Inter-American Court indicates that certain pecuniary implications of the victim's flight from her country should also be compensated. The Court has acknowledged that, in some cases, refugees face a sharp deterioration in the quality of their living conditions as a result of their flight. Thus, a victim of human rights violations forced to work in the country of refuge at a lower level than her

⁷⁸ Ibid, paragraph 7.4.

⁷⁹ IACtHR, *Moiwana Community v Suriname*, paragraphs 116-121. Note that the IACmHR has followed the argument as far as accepting that safety risks preventing return to one's country constitute a violation of the right to freedom of residence (*Rights International v Nigeria*, paragraph 30).

⁸⁰ IACtHR, *Urrutia v Guatemala*, Judgment of 27 November 2003, paragraph 168.

⁸¹ Ibid, paragraph 169.

⁸² IACtHR, *Chitay-Nech et al. v Guatemala*, Judgment of 25 May 2010, paragraph 278.

⁸³ IACtHR, *Moiwana Community v Suriname*, paragraphs 195-196.

regular schoolteacher post in the country of origin was awarded pecuniary damages for some of the loss of income incurred.⁸⁴ Similar damages were awarded for the ‘poverty and deprivation’ experienced by members of a displaced tribal community unable to practice their customary means of subsistence and livelihood in new sites inside and outside the country.⁸⁵

As well as the direct material disadvantages ensuing from the new living situation, the Court has also compensated indirect damages, such as the plane tickets purchased to flee the country, the international telephone calls a refugee and her family made to keep in contact, and the visits made by close family members to her subsequently.⁸⁶ Whilst less than requested by the victim’s representatives, the nominal sums awarded show that the Court recognises the need to compensate such indirect damages.

In contrast to the Cairo Declaration, it thus appears that the Inter-American Court compensates the consequential damages that derive from the person fleeing overseas rather than the fact of displacement itself. Where these damages possess a pecuniary nature, compensation is awarded based upon an equitable reading of the actual costs at the time that they were incurred, whether in the country of origin or asylum. Yet the situation is arguably less clear for non-pecuniary damages and costs associated with rehabilitation.

The problem is encapsulated by a case currently before the Inter-American Commission over whether a Chilean torture victim living as a refugee in Sweden should be compensated at Chilean or Swedish rates.⁸⁷ Whilst a decision on the merits of the case remains pending, it does seem that the Inter-American Court awards materially similar sums of non-pecuniary damages to residents and exiles even where the costs of medical and psychological rehabilitation may vary between countries.⁸⁸ This suggests that the upper limits for non-pecuniary damages and rehabilitation costs will be calculated against costs in the country of origin.

The Colombian Victims’ Law requires that the government establish regulations for the payment of compensation to victims through administrative mechanisms. This will take the form of a contract in which the victim accepts that the sum received from the state encompasses all the compensation due for her victimisation.⁸⁹ Compensation and other forms of reparation to victims may continue through judicial mechanisms, but the value of any state reparation already received by the person will be discounted from the reparation which the court may order the state to make.⁹⁰

⁸⁴ IACtHR, *Urrutia v Guatemala*, paragraph 158

⁸⁵ IACtHR, *Moiwana Community v Suriname*, paragraph 186.

⁸⁶ IACtHR, *Urrutia v Guatemala*, paragraphs 159-160.

⁸⁷ Inter-American Commission on Human Rights, *García Lucero v Chile*, Admissibility Decision of 12 October 2005.

⁸⁸ See, for example, IACtHR, *The Miguel Castro-Castro Prison v Peru*, paragraph 433(c)(i-iii); see also *Chitay-Nech v Guatemala*, paragraph 278 - the greater sums awarded to those family members who ended up overseas appears to reflect the violation of their rights as children, deriving from the separation of the family, rather than the fact that they ended up overseas (ibid, paragraph 170).

⁸⁹ Article 132. Note that this contract does not prejudice other measures of reparation established in the Victims’ Law and does not relieve the perpetrator of her duty to provide reparation to the victim if so ordered by a court.

⁹⁰ Article 133.

For displaced persons, administrative compensation will be delivered through specified mechanisms, such as land and housing subsidies.⁹¹ There is no mention of EDVs in this chapter of the law, suggesting that their situation may be addressed in the forthcoming regulations. In this respect, the provision requiring that these articles be given the interpretation ‘most favourable to the dignity and liberty of the human person’⁹² suggests that the jurisprudence of the Inter-American Court should be followed.

As regards the principle of *satisfaction*, the Inter-American Court is consistent in requiring measures to give public recognition to the facts and victim of the violation by the responsible state, including where one or more of the victims is outside the country.⁹³ Moreover, whether conceived as an aspect of reparation or as *cessation* and/or *non-repetition* of the internationally wrongful act, both the Human Rights Committee and the Inter-American Court expressly require that the responsible state carry out an effective investigation into the human rights violation and punish the perpetrators, regardless of the fact that the victims find themselves outside the country.⁹⁴ Within this process the Court requires that the victim

have full access and capacity to act at all stages and in all instances of the investigation and the corresponding trial, in accordance with domestic law and the norms of the American Convention.⁹⁵ This duty to facilitate the participation of the EDV in the process encompasses the requirement to ‘provide adequate safety guarantees’ to the victims.⁹⁶

The Victims’ Law in Colombia sets out a range of individual and collective measures of ‘satisfaction’ in Chapter IX of Title IV, including works of symbolic reparation, memorials to the victims, and exemption from military service for victims. Chapter X of Title IV sets out a series of rather ambitious ‘guarantees of non-repetition’ including demobilising and dismantling the illegal armed groups.

However, as mentioned above, ambiguity exists on how the state intends to ensure that the procedural protections within the process of investigating the violation of human rights law and/or IHL are guaranteed to EDVs. This is a crucial theme that requires urgent clarification on the part of the Colombian authorities if the provision of reparation is to be effective and fair across the universe of victims.

⁹¹ Article 132(3).

⁹² Article 27.

⁹³ IACtHR, *Urrutia v Guatemala*, paragraph 178; *Moiwana Community v Suriname*, paragraphs 216-218; *The Miguel Castro-Castro Prison v Peru*, paragraphs 445-454; *Chitay-Nech v Guatemala*, paragraphs 243-252.

⁹⁴ HRC, *Jiménez Vaca v Colombia*, paragraph 9; IACtHR, *Urrutia v Guatemala*, paragraph 177; *Moiwana Community v Suriname*, paragraph 207; *The Miguel Castro-Castro Prison v Peru*, paragraphs 436-442; *Chitay-Nech v Guatemala*, paragraphs 235-237.

⁹⁵ IACtHR, *Urrutia v Guatemala*, paragraph 177.

⁹⁶ IACtHR, *Moiwana Community v Suriname*, paragraph 207; *Chitay-Nech v Guatemala*, paragraph 235.

Implications for host states

Following consideration of the obligation upon the inflicting state to make reparation to EDVs, it is important to ask whether this duty has any legal implications for the state on the territory of which the victim of the human rights violation is now located. This must be considered not only from the standpoint of international human rights law, but also from the separate body of international refugee law, which will govern the host state's treatment of persons who fulfil the criteria for refugee status.

In terms of international human rights obligations, it is plain that these host states do not owe the victim an effective remedy for the violation of her rights by the inflicting state, nor are they generally required to actively assist such victims in seeking a domestic remedy from the inflicting state. There is some suggestion, though, that such states should not obstruct the efforts of victims to obtain reparation from the perpetrators, if necessary by means of universal civil jurisdiction.⁹⁷ Moreover, host states retain the right to advance reparation claims on the international plane in cases where the victims are their own nationals or, more generally, within relevant inter-state complaint mechanisms of human rights treaties.⁹⁸ Under international human rights law, reparation to EDVs thus has relatively few consequences for host states.

The implications under the specialised international law regime for the protection of refugees appear more far-reaching. For instance, the 1951 Convention relating to the Status of Refugees (1951 Refugee Convention) allows the refugee 'free access to the courts of law' on the territory of all states parties,⁹⁹ including those outside the territory of host states, suggesting that they must not seek to impede a refugee's access to pre-existing judicial remedies in the state of origin (assuming it is a party).¹⁰⁰

Moreover, the treaty requires the host state to assist refugees residing in its territory to exercise a right which 'would normally require the assistance of [the] authorities of a foreign country to which he cannot have recourse', either through its own authorities or 'an international authority' such as UNHCR.¹⁰¹ Crucially, such facilitation extends beyond the responsibility in Article 25(2) to issue documents and is required even when necessary for the exercise of a right outside that state's jurisdiction.¹⁰² Finally, the host state must not impose upon compensation received by refugees any taxes 'other or higher than those which are or may be levied on their nationals in similar situations'.¹⁰³ Arguably, therefore, state duties to assist EDVs to obtain reparation for human rights violations are clearer where the person is a refugee.

However, as implied by the aforementioned concept of a refugee not having recourse to the country of nationality or former residence, the implications of reparation for refugees are not entirely positive. Indeed, the possibility of receiving reparation for human rights violations from the state of origin raises the potential that this may provide grounds for the cessation of refugee status in the host state. It is to this question that the remainder of this section is dedicated.

⁹⁷ Nowak, M., and McArthur, E., *Convention Against Torture*, p.502.

⁹⁸ See, for instance, ICCPR, Articles 41-43 .

⁹⁹ Article 16.

¹⁰⁰ Hathaway, J., *The Rights of Refugees*, Cambridge, CUP, pp.645-647.

¹⁰¹ Article 25(1)

¹⁰² Ibid, pp.635-639.

¹⁰³ Article 29.

Cessation and transnational reparations

Under the 1951 Refugee Convention, refugee status ceases where the refugee has in some form voluntarily re-availed herself of the protection of her state of origin,¹⁰⁴ or because the circumstances which sustained her well-founded fear of persecution mean that she can no longer refuse to do so.¹⁰⁵ The re-establishment of the protection relationship between state and national thus constitutes the key factor for the cessation of refugee status.¹⁰⁶

Because situations arising under these clauses are often characterised by ambiguity, there appears to be substantial agreement among UNHCR and states parties that they should be interpreted in a restrictive manner and administered with great caution.¹⁰⁷ Moreover, the cessation provisions are exhaustive as to the termination of refugee status, i.e. a refugee does not lose her status other than on the grounds specified in the cessation clauses.¹⁰⁸

The general question posed here is whether a refugee's seeking and/or receiving reparation from the state of origin constitutes a reestablishment of national protection in the terms described by the cessation clauses. The analysis closely maps the procedural routes described above by which refugees and other EDVs might access reparation. It thus begins by considering whether approaching the diplomatic or consular authorities of a state in the exterior may constitute a 're-availment of national protection' in the sense of Article 1C(1) of the 1951 Refugee Convention. It then proceeds to assess if returning to the country of origin to participate in reparation proceedings constitutes 'reestablishment' in that country as per Article 1C(4). Finally, it asks whether the offer of reparation by a state may comprise a sufficient change of circumstances to engage Article 1C(5).

Approaching diplomatic or consular authorities

Article 1C(1) of the 1951 Refugee Convention ceases refugee status where a person:

...has voluntarily re-availed himself of the protection of the country of his nationality.

In contrast to the other limbs of Article 1C, this provision concerns the resumption of 'external' protection by the state of origin, since the word 'nationality' indicates that it

¹⁰⁴ Articles 1C(1)-(4).

¹⁰⁵ Articles 1C(5)-(6).

¹⁰⁶ Whether this relationship could exist where the individual in fact retained a well-founded fear of persecution might be questioned. On the construction of Articles 1C(1)-(4), which emphasise the 'voluntariness' of the acts leading to cessation, it is debateable whether the 'well-founded fear of persecution' actually needs to have disappeared in order for cessation to take place.

¹⁰⁷ Fitzpatrick, J. and Bonoan, R., 'Cessation of Refugee Status', in E. Feller et al. (eds.), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, Cambridge, CUP, 2003, p.523, 542.

¹⁰⁸ See, for example, Austrian Administrative Court, *M v Federal Ministry of the Interior*, Judgment of 9 May 1996.

does not apply to stateless refugees.¹⁰⁹ The rationale for its drafting is to mirror the denial of external protection as the original defining characteristic of refugee status.¹¹⁰ For our purposes, the question is thus whether seeking reparation through diplomatic or consular channels amounts to voluntary re-availment of the protection of her country by the refugee.

External protection is understood as denoting measures taken by a subject of international law in order to safeguard or promote some form of ‘benefit due to nationals of that country by virtue of international law or comity’.¹¹¹ This not only suggests a tripartite relationship, whereby one party protects a second against a third party (or forces of nature),¹¹² but also that such action is based on links of nationality between protecting state and individual. On this point, the jurisprudence identifies the acquisition or renewal of a national passport or certificate of nationality as a relevant indication of the resumption of external protection necessary to engage Article 1C(1).¹¹³

By contrast, the provision of reparation through diplomatic authorities for human rights violations is not usually a measure opposed to third party states, but rather to the state of nationality. Moreover, the victim’s right to reparation for human rights violations suffered under the jurisdiction of the state accrues to both nationals of that state and non-nationals, and cannot be considered as a benefit that accrues on the basis of nationality. External reparation for past human rights abuses therefore should not be equated with external protection of the country of nationality in the sense of Article 1C(1).

Even were reparation for human rights violations a form of external protection, whether a refugee has ‘voluntarily re-availed’ herself of such protection depends, firstly, upon the intention behind the act of approaching the diplomatic authorities. What matters for ‘re-availment’ is

the conscious subjection under the government of that country – or, in other words, the normalization of the relationship between state and individual.¹¹⁴

In this respect, the jurisprudence is clear that, even if the refugee has taken steps that may *per se* constitute re-availment of protection – such as obtaining a national passport - but has acted other than for a desire to regularise her relations with the

¹⁰⁹ The understanding of Article 1C(1) as referring to external protection is confirmed by the jurisprudence cited by Grahl-Madsen, A., *The Status of Refugees in International Law*, Leyden, A.W. Sijthoff, 1966, p.383.

¹¹⁰ Grahl-Madsen, A., ‘Protection of Refugees by Their Country of Origin’, in P. Macalister-Smith and G. Alfredsson (eds.), *The Land Beyond: Collected Essays on Refugee Law and Policy by Atle Grahl-Madsen*, The Hague, Martinus Nijhoff, 2001, pp.326-327. On this understanding, there is no need to have recourse to the ‘well-founded’ fear element to explain its inclusion, as has been attempted by some authors (see, for instance, Fortin, A., ‘The Meaning of “Protection” in the Refugee Definition’, *International Journal of Refugee Law*, Vol. 12, pp.575-576).

¹¹¹ Grahl-Madsen, A., *The Status of Refugees*, p.391.

¹¹² Grahl-Madsen, A., ‘Protection of Refugees’, p.323.

¹¹³ *Ibid.*, p.382. There are also suggestions that travelling on these documents to a third country or receiving certain kinds of consular aid during such travels may also qualify as external protection (Fitzpatrick, J. and Bonoan, R., ‘Cessation of Refugee Status’, p.540).

¹¹⁴ Grahl-Madsen, A., *The Status of Refugees*, p.381.

country of origin, 'voluntary re-availment' has not taken place.¹¹⁵ This suggests that where the intention behind a refugee's engagement with diplomatic authorities is to receive compensation or similar kinds of reparation for rights violations against her in the past then whether 'voluntary re-availment' had taken place would be open to question. This will also be the case where the refugee's approach to diplomatic authorities lacks 'voluntariness', such as where pressured to do so by the host state. Finally, mere willingness on the part of the refugee to avail herself of external protection is insufficient for 'reavailment', which requires this protection to be actually forthcoming.¹¹⁶ 'Voluntary re-availment' would not occur from seeking reparation but only at the point of receiving any reparation due.

Participation in reparations through return

Unlike Article 1C(1), Article 1C(4) concerns the resumption of 'internal protection' in the sense of 'the protection of the Law'.¹¹⁷ Article 1C(4) provides that status ceases if the refugee:

... has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution[.]

This clause contemplates the resumption of protection as evidenced by the subjective decision by the refugee to reside again in the country of origin. Given this emphasis on the fact of residence, the question is whether return by a refugee – whether to resettle in place of former residence as a measure of restitution or merely to participate in sporadic reparation proceedings - leads to the cessation of her status under Article 1C(4).

As a preliminary point, it is clear that refugee status does not cease upon the point of a refugee's return to her country of origin,¹¹⁸ but only upon her 're-establishment' in that territory. In this regard, the jurisprudence seems to privilege the intention of the refugee settle again permanently in the country over the determination of any fixed time period of residence. Nonetheless, mere intention of itself is insufficient without actual return. As intention is usually inferred from concrete actions lengthy periods spent within the country of origin often imply an intention to re-establish oneself there,¹¹⁹ as do the repeated carrying out of such ordinary activities as working or

¹¹⁵ Ibid, pp.385-388. For this reason, various authors have recommended the need to engage with the real reasons why refugees contact diplomatic authorities rather than assuming that certain acts are inherently based upon the desire to securing external protection (Hathaway, J. *The Law of Refugee Status*, Toronto, Butterworths, 1991, p.194; Fitzpatrick, J. and Bonoan, R., 'Cessation of Refugee Status', p.524).

¹¹⁶ Grahl-Madsen, A., *The Status of Refugees*, p.380; see also Hathaway, J. *The Law of Refugee Status*, p.195; Goodwin-Gill, G. and McAdam, J., *The Refugee in International Law*, Oxford, OUP, 3rd edition, 2007, p.136.

¹¹⁷ Grahl-Madsen, A., *The Status of Refugees*, p.381.

¹¹⁸ It might be suggested that in this circumstance refugee status could cease simply because she no longer fulfils the alienage criteria in Article 1A(2). This is unpersuasive since the treaty includes specific clauses that are definitive and exhaustive as to the conditions under which refugee status ceases. Article 1C(4), which expressly regulates the consequences of such return, would be rendered extraneous by such an approach.

¹¹⁹ Grahl-Madsen, A., *The Status of Refugees*, p.381; Hathaway, J. *The Law of Refugee Status*, p.199.

accessing state benefits.¹²⁰

However, even such actions will not necessarily be sufficient where the clear intention is not to resettle there.¹²¹ The mere fact that a refugee has returned to her country of origin in order to participate in state-organised reparation procedures does not in itself suffice for the cessation of refugee status. Instead, it is necessary to distinguish between forms of participation that merely seek to obtain backward-looking reparation for past damages and those that indicate a desire to establish residence again in the country of origin.

It is equally axiomatic for the application of Article 1C(4) that such return must be voluntary, and the French text of the provision in fact emphasises the voluntariness of the act of returning rather than that of re-establishment.¹²² This raises questions about whether a refugee who decides to re-establish her life in the country of origin following an involuntary return in fact loses her refugee status. Certainly, in the unlikely event that a refugee returns involuntarily to her country of origin for reasons related to the securing of reparation, her refugee status will not cease.

The offer of reparation as a change in circumstances

Like Article 1C(4), Article 1C(5) concerns the re-establishment of internal protection by the country of origin. Its first sentence provides that refugee status ceases if a refugee

...can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality.¹²³

Unlike other forms of cessation, the invocation of this provision is the prerogative of an asylum state satisfied that a change in the objective circumstances makes protection once again viable in the individual case.¹²⁴ For our purposes, the question is whether an offer of reparation by the country of origin constitutes a change in circumstances to justify the application of Article 1C(5).

The offer of reparation may be relevant to Article 1C(5) in so far as it raises the objective level of protection available to the refugee in the country of origin. In this respect, UNHCR has long recognised the important role that access to basic governmental and judicial institutions may play in the re-establishment of internal protection.¹²⁵ The European Court of Justice has similarly held that for the application of Article 1C(5), the country of origin must operate

¹²⁰ Canadian Immigration and Refugee Board, *VA301194 v Canada*, Decision of 18 October 2004.

¹²¹ Goodwin-Gill, G. and McAdam, J., *The Refugee in International Law*, p.139, fn.24.

¹²² Grahl-Madsen, A., *The Status of Refugees*, 373.

¹²³ Article 1C(6) makes similar provision in respect of stateless refugees.

¹²⁴ Hathaway, J. *The Law of Refugee Status*, p.199.

¹²⁵ UNHCR, *Note on Cessation Clauses*, U.N. Doc EC/47/SC/CRP.30, 30 May 1997. This position was endorsed by experts participating in the UNHCR global consultations in 2003 ('Summary Conclusions: Cessation of Refugee Status, Expert Roundtable, Lisbon, May 2001', in E. Feller et al. (eds.), *Refugee*

... an effective legal system for the detection, prosecution and punishment of acts constituting persecution [...including] the laws and regulations of the country of origin and the manner in which they are applied, and the extent to which basic human rights are guaranteed in that country.¹²⁶

Yet, regardless of such doctrinal elaborations, the fundamental legal condition for Article 1C(5) application is that the circumstances have changed to the degree that the pre-existing basis for the refugee's fear of persecution is now removed. This is ultimately a question of fact.¹²⁷

On this basis, the mere existence of a reparation program should not be assumed to constitute a sufficient change in circumstances to permit cessation of refugee status. However, to the extent that the offer of reparation reinforces the internal system of protection in a way that addresses the root fear of persecution of the refugee, it must be a factor that is relevant to this determination.

Moreover, any change of circumstances must be 'significant and non-temporary',¹²⁸ since national protection is not a momentary or temporary phenomenon but should rather have an enduring character. A 'waiting period' of the kind advocated for by UNHCR policy documents should therefore be observed,¹²⁹ during which a proper assessment can be obtained of the level of ongoing protection provided by the reparation efforts.

The terms of the first sentence of Article 1C(5) imply that the individual refugee's subjective choice regarding her return to the country of origin is superseded by a change in the objective circumstances. Whilst this is often understood in terms of the general conditions in the country of origin, in rare cases it might also be as a result of changes in the individual circumstances of the refugee.¹³⁰ However, the second sentence of Article 1C(5) allows for an element of subjective choice for certain classes of refugees:

[Article 1C(5)] shall not apply to a refugee [recognised under Article 1A(1) of the CSR] who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

In states which apply the second sentence of Article 1C(5) to Article 1A(2) refugees,¹³¹ it would therefore be appropriate to refrain from applying the ceased circumstances

Protection in International Law: UNHCR's Global Consultations on International Protection, Cambridge, CUP, 2003).

¹²⁶ Court of Justice of the European Communities (Grand Chamber) (ECJ), *Abdulla et al. v Federal Republic of Germany*, Judgment of 2 March 2010, paragraphs 70-71.

¹²⁷ Goodwin-Gill, G. and McAdam, J., *The Refugee in International Law*, p.143.

¹²⁸ See, for example, ECJ, *Abdulla et al. v Federal Republic of Germany*.

¹²⁹ See Fitzpatrick, J. and Bonoan, R., 'Cessation of Refugee Status', p.496

¹³⁰ See, for example, Norwegian Supreme Court, *A v Appeals Board*, Judgment of 29 June 2010.

¹³¹ See Milner, D. 'Exemption from Cessation of Refugee Status in the Second Sentence of Article 1C(5)/(6) of the 1951 Refugee Convention', *International Journal of Refugee Law*, Vol. 16, pp.91-107.

clause to refugees who adduce such ‘compelling reasons’ for refusing to engage with the protective elements of any reparation project offered by their state of origin.

Host states and reparation for refugees

The provision of reparation to externally displaced victims by an inflicting state has potentially significant legal implications for host states in terms of refugee protection more than human rights law. However, any assumption that the offer of reparation, or its receipt by the refugee, automatically ceases refugee status would be misplaced. Instead, whether refugees’ engagement with the reparation regime constitutes grounds for cessation of their refugee status will usually depend upon the nature of such interaction. In many refugee situations, it may be that the

normal bond of trust and allegiance between citizen and government
has been replaced by a relationship of fear and alienation.¹³²

However, in view of the increasing practice of recognising as refugees those persons whose governments are unable to protect against serious third party harms,¹³³ this cannot necessarily be assumed. This would seem particularly likely in states which apply an expanded refugee definition based on generalised insecurity in line with regional refugee protection instruments, such as the 1984 Cartagena Declaration in the Americas.¹³⁴

Where such interaction is not characterised as falling under one of the cessation clauses, certain duties are then incumbent upon the host state in assisting the refugee to access any reparation due. In discharging these duties, the host state may also arrange that such assistance is afforded to the refugee by ‘an international authority’,¹³⁵ a term understood to refer in this treaty context to UNHCR.¹³⁶ Compliance with these 1951 Refugee Convention obligations will, of course, be subject to supervision by UNHCR, the international agency tasked with responsibility for the protection of refugees and oversight of the 1951 Refugee Convention. It is to the competence of this organisation in questions of reparation to which we now turn.

Reparations and UNHCR competence

UNHCR represents a key player in the international protection system for refugees and other displaced persons for which the offer of reparation to EDVs may have consequences. The core mandate of UNHCR, as defined by its 1950 Statute, requires it to assume the functions of ‘providing international protection’ to refugees, and ‘seeking permanent solutions’ to their situation through ‘voluntary repatriation... or

¹³² Grahl-Madsen, A., ‘Protection of Refugees’, p.328.

¹³³ See, for example, the practice cited by Zimmerman, A., and Mahler, C., ‘Article 1 A, para. 2’, in Zimmermann, A., et al. (eds.), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary*, Oxford, OUP, 2011, pp.363-369.

¹³⁴ 1984 Cartagena Declaration, Conclusion 3; see also 1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa, Article 1(2).

¹³⁵ 1951 Refugee Convention, Article 25(1).

¹³⁶ Lester, E., ‘Article 25’, in Zimmermann, A., et al. (eds.), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary*, Oxford, OUP, 2011, p.1141.

their assimilation within new national communities'.¹³⁷ In the intervening 60 years since the adoption of its Statute, UNHCR's functions have been extended beyond this core mandate through a series of resolutions by the UN Economic and Social Council and the UN General Assembly, and through UNHCR practice in which states have acquiesced.¹³⁸

*Competence ratione personae*¹³⁹

For refugees produced by events subsequent to 1 January 1951, paragraph 6B of the 1950 Statute defines UNHCR's competence *ratione personae* over refugees in terms not dissimilar to Article 1A(2) of the 1951 Refugee Convention as amended by the 1967 Protocol.¹⁴⁰ Two questions thus arise in respect of reparation for EDVs: firstly, does the seeking of reparation by a refugee cease UNHCR competence for the person and, secondly, are EDVs who are not 'refugees' a legitimate concern of UNHCR? These closely-related questions can be answered against the backdrop of the historical development of the UNHCR mandate.

Unlike refugee status under the 1951 Refugee Convention, competence for UNHCR statutory refugees is not governed by an express cessation clause, suggesting that it terminates when the factual circumstances of the person cease to fulfil the paragraph 6B inclusion definition. Nonetheless, given the similarity between the elements of the two refugee definitions, it may be assumed that where reparation removes the basis for a 'well-founded fear of persecution' or for the 'unwillingness or inability to avail oneself of the protection of the country', these elements should be interpreted in parity with Articles 1C(5) and 1C(1) of the 1951 Refugee Convention respectively. However, by contrast, mere return to the country of origin (thereby removing the alienage element) rather than 're-establishment' in the terms of Article 1C(4) appears to be all that is required to cease UNHCR competence for Statutory refugees.

Nonetheless, as noted above, UNHCR's competence *ratione personae* has been extended far beyond the terms of the Statute such that it now effectively encompasses all those who having crossed an international frontier 'can be determined or presumed to be without, or unable to avail themselves of' the protection of their state.¹⁴¹ On the basis of this extended mandate, in most cases, a strong case will be able to be made out for a legitimate UNHCR interest in securing the rights of EDVs who may not be refugees within the statutory sense but still lack the protection of their state. The fact that the extended UNHCR mandate also includes refugees who have already voluntarily repatriated to their countries of origin¹⁴² and, in certain circumstances,¹⁴³ internally displaced persons and rejected asylum seekers further suggests that UNHCR competence will not cease through the mere return by persons of concern to the office

¹³⁷ UNHCR Statute, Annex to UNGA Resolution 428(v), 14 December 1950, paragraph 1.

¹³⁸ See, for example, Loescher, G., *The UNHCR and World Politics: A Perilous Path*, Oxford, OUP, 2001.

¹³⁹ Literally, competence 'because of the person involved'.

¹⁴⁰ UNHCR Statute, paragraph 6B.

¹⁴¹ Goodwin-Gill, G. and McAdam, J., *The Refugee in International Law*, p.32.

¹⁴² See, for example, UNGA, *Resolution 40/118*, 13 December 1985, paragraph 7; approving UNHCR Executive Committee, *Conclusion No. 40 (XXXVI) on Voluntary Repatriation*, 18 October 1985.

¹⁴³ See, for example, UNGA, *Resolution 48/116*, 20 December 1993, paragraph 12.

to access reparation, at least until such time as they voluntarily re-establish themselves in the home state.

*Competence ratione materiae*¹⁴⁴

One of UNHCR's primary statutory functions is in the facilitation of voluntary repatriation. During involvement in voluntary repatriations, the UNHCR Executive Committee has recognised the right of refugees to access reparations.

[I]n principle, all returning refugees should have the right to have restored to them or be compensated for any housing, land or property of which they were deprived in an illegal, discriminatory or arbitrary manner before or during exile; notes, therefore, the potential need for fair and effective restitution mechanisms, which also take into account the situation of secondary occupants of refugees' property; and also notes that where property cannot be restored, returning refugees should be justly and adequately compensated by the country of origin;¹⁴⁵

Even if these recommendations are addressed to states, they implicitly assume that the UNHCR function of facilitating voluntary repatriation extends to these themes. This is confirmed in other UNHCR policy documents that outline a role for UNHCR in securing property restitution and compensation within the context of voluntary repatriation.¹⁴⁶

Outside of the context of voluntary repatriation, precedent for such interest is less solid but still exists. One of UNHCR's statutory functions in providing for the 'protection of refugees' is:

Endeavouring to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement.¹⁴⁷

This provision is closely linked to Article 30 of the 1951 Refugee Convention, which was originally concerned with regulating the transfer of assets by refugees from the state of asylum to the state where they were being resettled.¹⁴⁸ Nonetheless, states in the UN General Assembly have endorsed UNHCR interpretation of this provision (and by extension its mandate in such matters) as encompassing 'the transfer of assets from their country of origin to their country of residence'.¹⁴⁹ To the extent that reparation procedures encompass compensation for property loss as a result of persecution or flight from the country, it would appear that UNHCR possesses a legitimate interest in

¹⁴⁴ Literally, competence 'because of the subject-matter involved'.

¹⁴⁵ UNHCR Executive Committee, *Conclusion No. 101 (LV) on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees*, 8 October 2004, paragraph (h); see also paragraph (i) on gender within the restitution and compensation framework.

¹⁴⁶ See, for example, UNHCR, *Handbook, Voluntary Repatriation: International Protection*, Geneva, 1996, p.27, p.82, p.88; UNHCR, *The Problem of Access to Land and Ownership in Repatriation Operations*, Inspection and Evaluation Service, May 1998; UNHCR, *Handbook for Repatriation and Reintegration Activities*, Geneva, May 2004, Module 4, section 4.1.

¹⁴⁷ UNHCR Statute, paragraphs 8(e).

assisting refugees and other EDVs with such matters, even outside the voluntary repatriation context.

Finally, on the basis of requests by particular states, UNHCR has occasionally served in an *ad hoc* fashion to channel and even administer compensation claims by refugees.¹⁵⁰ This has involved not only property compensation, such as for Asians expelled from Uganda¹⁵¹ and for Iraqi refugees from the First Gulf War,¹⁵² but also compensation for persecution, as for Nazi refugees from Germany.¹⁵³

Whether grounded in the ‘transfer of assets’ or one of the other ‘protection’ functions provided for at paragraph 8 of its Statute, e.g. promoting measures to improve the situation of refugees, there appears to be a *prima facie* legal basis for UNHCR to assist EDVs in receiving certain kinds of reparation from their countries of origin, so long as such activities do not compromise its ‘non-political character’ or the ‘humanitarian and social’ nature of its work stipulated by paragraph 2 of the UNHCR Statute.

This paper has thus far concentrated on addressing the question of reparation for externally displaced victims from the perspective of particular bodies of international law. However, there has as yet been little in the way of academic studies about how the potential beneficiaries of this legal framework view the issue of reparation, especially in circumstances where the conditions giving rise to their displacement persist.

If reparation programmes are to seek to include this important sector of the victim population, it is important to gain a sense of their perceptions on the theme of reparation. The paper now moves to address this topic through a case study of externally displaced Colombians and their perceptions of the Victims’ Law recently adopted by Colombia as well as wider questions relating to reparation.

¹⁴⁸ Nagy, B., ‘Article 30’, in Zimmermann, A., et al. (eds.), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary*, Oxford, OUP, 2011, p.1228 *et seq.*

¹⁴⁹ UNHCR, *Report of the United Nations High Commissioner for Refugees*, 1 May 1975, UN Doc. A/10012, paragraphs 56-57. This report was endorsed by UN General Assembly, *Resolution 3454 (XXX)*, 9 December 1975.

¹⁵⁰ In the aftermath of World War II, the immediate predecessor to UNHCR, the International Refugee Organization, had also played a role in administering reparations payments albeit on a collective basis for the benefit of ‘non-repatriable victims’ of Nazi persecution, a function that it assumed from the Inter-Governmental Committee on Refugees (Rubin, S.J., and Schwartz, A.P., ‘Refugees and Reparations’).

¹⁵¹ UNHCR concluded an Agreement with Uganda on payment of compensation to Asians of undetermined nationality in August 1977 (UNHCR, *Report of the United Nations High Commissioner for Refugees*, 12 September 1978, UN Doc. A/33/12, paragraph 68).

¹⁵² The United Nations Claims Commission received claims submitted by UNHCR for individuals who were not in a position to have their claims filed by governments; Retrieved from <<http://www.uncc.ch/theclaims.htm>>.

¹⁵³ The first UNHCR Indemnification Fund was established on the basis of an Agreement between UNHCR and the Federal Republic of Germany on 5 October 1960, with a Supplementary Indemnification Fund established by an Agreement on 24 November 1966 (UNHCR, *Note on International Protection (Submitted by the High Commissioner), Addendum UNHCR indemnification funds*, 25 September 1975, UN Doc. A/AC.96/518/Add.1).

Colombian externally displaced persons: background

In the field of victim reparations, Colombia represents an important case study by virtue of complex, protracted and ongoing non-international armed conflict. At the present time, it may briefly be characterised as a conflict between the Colombian government and left-wing guerrilla groups. The FARC-EP and the UC-ELN, the most prominent among these, have been displaced from the centre of the country towards more remote border areas in recent years.¹⁵⁴

Although many of the infamous right-wing paramilitary groups formally demobilised under the 2005 Justice and Peace Law,¹⁵⁵ their successor groups continue to act under different names in many parts of the country.¹⁵⁶ These dynamics are further complicated by the penetration of the drug trade in the conflict and the existence of other armed actors tied more closely to common criminality. Colombia is estimated to have the highest levels of internal displacement in the world,¹⁵⁷ and both the conflict and the resulting displacement spill over the borders to impact upon other states in the region.

There is a long history of Colombian emigration and the borders between Colombia and its three neighbours are highly permeable. Along the frontier, particularly with Ecuador and Venezuela, there is a constant coming and going of people from both sides and a highly lucrative cross-border trade. At the time of fieldwork, the Colombian armed actors were reported to have a presence in all of the border regions where research was conducted, which largely reflected their presence on the corresponding Colombian side.

The *guerrilla* had a strong presence in the rural zones and used the border areas for supplies, rest and recuperation, and the launching of attacks into Colombian territory. Colombian armed groups such as the *Rastrojos*, *Urabeños*, and *Águilas Negras* practised extortion and *sicariato* (contract killings) in border towns and had a presence in rural sites that were strategic for drug-trafficking or extractive industries. Although they generally keep a low public profile, the different non-state armed groups sometimes entered into armed confrontations sometimes according to their shifting priorities and alliances. All the Colombian armed groups exert differing levels of social control in the border regions, such that refugees live ‘quiet as mice and [do] not speak out’ in order to avoid drawing their adverse attention.¹⁵⁸ These groups had

¹⁵⁴ FARC-EP stands for *Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo* (Revolutionary Armed Forces of Colombia – Army of the People), and UC-ELN stands for *Unión Camilista-Ejército de Liberación Nacional* (Camilist Union – National Liberation Army). Both have been in existence for over forty-five years.

¹⁵⁵ Republic of Colombia, *Ley 975 de 2005 por la cual se dictan disposiciones para la reincorporación de miembros de grupos armados organizados al margen de la ley, que contribuyan de manera efectiva a la consecución de la paz nacional y se dictan otras disposiciones para acuerdos humanitarios* (Law 975 of 2005 by which measures for the reincorporation of members of illegal armed groups that contribute in an effective manner to the attainment of national peace, and other provisions for humanitarian accords, are decreed).

¹⁵⁶ See, for example, Human Rights Watch, *Paramilitaries’ Heirs: The New Face of Violence in Colombia*, February 2010.

¹⁵⁷ Internal Displacement Monitoring Centre, *Internal Displacement: Global Overview of Trends and Developments in 2010*, March 2011, p. 15.

¹⁵⁸ Interview 124. At least in Ecuador, this has resulted in invisible flows of forced displacement away from the border zones of neighbouring countries towards the interior by Colombians and Ecuadorians

substantially less presence away from the border zones.

Of the estimated 455,000 Colombian refugees, asylum-seekers and those otherwise in need of international protection worldwide, approximately 86 per cent (393,000) live in Ecuador, Panama and Venezuela.¹⁵⁹ In this respect, it is important to emphasise that these three states are parties to the 1951 Refugee Convention and/or its 1967 Protocol,¹⁶⁰ as well as to the ICCPR and ACHR.¹⁶¹ However, there are important differences between them in the formal scope of protection on offer to refugees.

In Ecuador, the expanded refugee definition contained in the 1984 Cartagena Declaration is applied in its domestic law.¹⁶² By contrast, neither Panama nor Venezuela presently applies the expanded definition on the basis that they are not signatories to the Cartagena Declaration.¹⁶³ Panama has, however, accorded the subsidiary protection status known as PTH to displaced Colombian communities that crossed the border to Darién province as mass influxes during the 1990s.¹⁶⁴ These persons are protected against *refoulement* but may not leave their reception communities except on exceptional grounds and with specific authorisation.

There is little in the way of hard data, but certain generalisations may be made regarding the profile of Colombians in need of international protection. In Ecuador, Panama and Venezuela, these flows started to increase in numbers and visibility about 10 to 15 years ago, coinciding with the period of fierce paramilitary expansion across the territory of Colombia.

Although there have been isolated cases of whole communities displacing across the borders, most arrive as individuals or families. Most are *campesinos* (peasants) or small traders or vendors fleeing generalised threats and conditions of insecurity in Colombia. Those living in the border zones tend to come from adjoining regions of Colombia, either directly or following one or more prior forced displacements within Colombia that ended up in the adjacent region. Refugees with a strong political or professional profile are more likely to be found in the capital cities of the neighbouring countries, alongside those with safety problems in the frontier.

(Internal Displacement Monitoring Centre, *Un conflicto que trapasa fronteras: el impacto humanitario del conflicto colombiano en Ecuador*, October 2009).

¹⁵⁹ For figures, see footnote 17 above.

¹⁶⁰ The 1951 Refugee Convention was acceded to by Ecuador (17 August 1955) and Panamá (2 August 1978). The 1967 Protocol was acceded to by Ecuador (6 March 1969), Panamá (2 August 1978) and Venezuela (19 September 1986). The Ecuadorian and Venezuelan statements at the point of accession have no implications for the present topic.

¹⁶¹ The ICCPR was ratified by Ecuador (6 March 1969), Panamá (8 March 1977) and Venezuela (10 May 1978). The ACHR was acceded to by Ecuador (8 December 1977), Panamá (8 May 1978) and Venezuela (23 June 1977).

¹⁶² Republic of Ecuador, *Decreto 3301 de 1992* (Decree 3301 of 1992), Article 2.

¹⁶³ See, respectively, Republic of Panamá, *Decreto 23 de 1998* (Decree 23 of 1998) and Bolivarian Republic of Venezuela, *Ley orgánica sobre refugiados o refugiadas y asilados o asiladas* (Organic Law on Refugees and Asylees), 2001, and *Decreto 2491 de 2003* (Decree 2491 of 2003). There is some evidence that Venezuela applies the declaration as a matter of policy.

¹⁶⁴ This status, referred to as *Protección Temporal Humanitaria* (PTH, Temporary Humanitarian Protection) is grounded in Articles 80-87 of Decree 23 of 1998. There are currently approximately 600 individuals with PTH status in Panamá.

Within the neighbouring countries, particularly Panama and Venezuela, the majority of Colombians in need of international protection remain ‘invisible’,¹⁶⁵ not seeking international protection and instead remaining undocumented or using alternative migratory routes. This is partly as a result of lengthy refugee status determination processes, poor recognition rates and certain informal deterrent measures.¹⁶⁶

In Ecuador, generally the most receptive of these countries to refugees, the state response was further improved through the joint Ecuador-UNHCR 2009 *registro ampliado* (enhanced registration) exercise to regularise undocumented Colombians, by dispatching mobile registration brigades to the border zones and applying accelerated determination procedures.¹⁶⁷ Nonetheless, in each country, once refugee status has been recognised, the relevant refugee documents have to be renewed each year. This is an extremely time-consuming and costly process, especially for those living in remote border zones.¹⁶⁸

Yet, even in the Ecuadorian case, the gap between recognition of refugee status and practical access to the ensuing social and economic rights remains large.¹⁶⁹ Integration for asylum-seekers and refugees with a *campesino* or small trader profile is generally easier in the border regions, which are familiar in cultural and social terms. Their everyday lives are relatively unaffected by changing diplomatic relations between governments. For those living in the cities, discrimination appears more pronounced, particularly in Panama and Ecuador, and integration is a struggle for many.

Reparation as re-establishment

The paper now turns to consider how Colombian externally displaced victims located in Ecuador, Panama and Venezuela view the Victims’ Law and associated questions around the substantive element of reparation. After outlining their general perceptions around the theme, the analysis narrows to consider how such persons construct the concept of reparation from their particular standpoint as victims unable to return to their own country.

General perceptions of the law

Knowledge of the (at that time) proposed Victims’ Law was not widespread among the displaced Colombians interviewed in Ecuador, Panama and Venezuela. A handful indicated that they knew of the proposal but none in any detail.¹⁷⁰ These individuals tended to have a stronger profile of political engagement when they were in Colombia or now lived in border zones where Colombian television channels and radio signals

¹⁶⁵ See Gottwald, M., ‘Protecting Colombian Refugees’.

¹⁶⁶ Ibid. See also footnote 18 above.

¹⁶⁷ See Republic of Ecuador, *Decreto 1635 de 2009* (Decree 1635 of 2009), Article 1; Republic of Ecuador, *Política del Ecuador en materia de refugio* (Policy of Ecuador in Refugee Matters), 2008, pp.37-38. For a critical assessment, see Servicio Jesuita a Refugiados y Migrantes Ecuador, *Informe sobre el proceso de registro ampliado en Muisne, Quinindé y San Lorenzo*, 2009.

¹⁶⁸ For Ecuadorian examples, see McGrath, I., ‘Enhanced Refugee Registration and Human Security in Northern Ecuador’, *New Issues in Refugee Research*, No. 198, January 2011.

¹⁶⁹ Interview 6.

¹⁷⁰ Interviews 47, 48, 85, 86, 88, 102, 103, 108, 121, 127.

could be received free of charge. Increased interest in this law was also noted by organisations working with refugees in such zones.¹⁷¹

No single respondent disagreed in principle with the idea that the Colombian state should make reparation to victims of the armed conflict. Almost all of those interviewed believed that they were owed reparation by the Colombian government for their experiences.¹⁷² Nonetheless, widespread scepticism about whether the proposed reparation would ever reach them was based upon a lack of confidence in the government and its motives. As the male head of household of one asylum-seeking family in Venezuela remarked:

Whoever believes in the Victims' Law is mad; [Colombian politicians] always talk about this and promise things but they only ever give to their friends and other rich people – I do not trust it.¹⁷³

Others worried that, as victims outside the country, they would not be taken into account as they would if they had been *desplazados* (internally displaced persons).¹⁷⁴

Yet even the most outspoken critics of the Victims' Law manifested a strong interest in being included in the proposed reparation. For instance, one former youth leader seeking asylum on the basis of persecution by the Colombian state asserted that:

Reparation is not a solution to the conflict in Colombia and it would be inconsistent for me to apply for reparation whilst the government is still committing damage to the people who live there in poverty and misery... But it would be stupid of me not to accept economic compensation.¹⁷⁵

The sense of entitlement on the part of EDVs was generally strong. One government official working closely with refugees commented that some had even passed up opportunities to take up other nationalities because they feared being unable to receive reparation or return to Colombia once the conflict finished if they lost their refugee status.¹⁷⁶

As adopted, the Victims' Law partially engages with this knowledge gap through providing for the adoption of measures designed for disseminating information to victims outside the country.¹⁷⁷ Nonetheless, the manner in which such measures are executed will be important. In particular, the Colombian government will need carefully to consider how best to ensure that this information arrives to hard-to-reach EDV populations living in rural zones of neighbouring countries.

For example, many displaced Colombians work on remote *fincas* (farms) in Táchira and Apuré states, Venezuela,¹⁷⁸ whilst others are almost incarcerated working in inhuman conditions on palm plantations overseen by Colombian armed groups in

¹⁷¹ Interviews 139, 140.

¹⁷² Only two interviewees expressed no interest in receiving reparations, explaining their desire to forget about what had happened in Colombia and concentrate on making their lives anew in Venezuela (Interviews 105, 110).

¹⁷³ Interview 124.

¹⁷⁴ Interview 93.

¹⁷⁵ Interview 102.

Esmeraldas province, Ecuador.¹⁷⁹ It may be that non-governmental humanitarian institutions that visit such zones would be prepared to include information about the Victims' Law in their informational events.

Reparation as the restitution of stability

Colombian EDVs conceived of reparation as the need to restore to their lives the degree of stability that had been lost through their forced displacement to other countries. 'Re-establishment', even if this term was not specifically used, was thus the core concept underlying their different notions of what reparation should involve. A former teacher persecuted by the *guerrilla* in Colombia but now living undocumented in Panama City expressed these sentiments directly:

I need some stability here... My [three] children don't understand how life has changed from one moment to the next and we have lost the stability that we had in Colombia.¹⁸⁰

This was echoed by a young asylum-seeker in Quito, Ecuador, who saw reparation as the potential to 'have a stable life and organise ourselves well'.¹⁸¹ Another refugee woman in Ecuador stated simply: 'I want to live as I lived before and have the same as I had before'.¹⁸² As such, EDVs framed other aspects of reparation - such as 'return', 'land restitution' and 'compensation' - against the practical imperative of recovering personal and social stability.

In general, the expectation among EDVs was that reparation should help them to rebuild their lives outside Colombia. Not one single respondent endorsed the idea that return to their former homes in Colombia would, in itself, be an adequate form of reparation for their forced displacement nor indicated any interest in such return. The great majority also insisted that any return to other parts of Colombia was inappropriate. The tendency among the interviewees to perceive reparation as a process occurring in the country of asylum reflected a mix of security and socio-economic factors.

Those actively pursued by one of the parties to the Colombian conflict highlighted acute safety concerns as a strong basis for rejecting the possibility of return to Colombia as a form of reparation. For example, an evangelical pastor who fled Colombia with the FARC-EP on his heels explained:

I am fearful of Colombia: every night I have nightmares that the *guerrilla* is pursuing me and kills me. We will not return there.... Wherever I would go in Colombia, I fear that they will kill me. Colombia is a very good country and I miss my family there. I cry

¹⁷⁶ Interview 60.

¹⁷⁷ Article 204.

¹⁷⁸ Interviews 116, 138.

¹⁷⁹ Interviews 6, 18, 32, 34.

¹⁸⁰ Interview 87.

¹⁸¹ Interview 59.

¹⁸² Interview 47.

because I can never go back.¹⁸³

The security factor was also frequently referred to in the reasoning of EDVs who had left as a result of less immediate problems related to the wider conditions of the armed conflict. These included generalised threats or violence, sporadic armed confrontations, and extortion or recruitment by one of the non-state armed groups. Crucially, both ‘types’ of EDVs cited the feeling of greater ‘tranquillity’ in the neighbouring countries as an important basis for rebuilding their lives there, even if this calm was sometimes a highly relative concept in the border zones where the Colombian armed groups continued to operate.

Economic considerations played a more complex role in EDVs’ discourse about the potential of repatriation to help rebuild their lives. In general, economic conditions in the surrounding countries, particularly Venezuela, were perceived as more favourable than those in Colombia. For instance, one asylum-seeker in Venezuela explained in pragmatic terms that:

Here I work three days a week as a furniture-maker and live easy. In Colombia, I used to work every day of the week as a topographer and I still didn’t have enough money to pay all of the costs.¹⁸⁴

Another displaced Colombian employed in Venezuela’s large informal economy reasoned that if he returned to Colombia he ‘would not be able to support all of these children’.¹⁸⁵ Meanwhile, a refugee from Nariño now working as a street vendor on the Ecuadorian side of the border expressed a common sentiment as he rationalised his intention not to repatriate on the basis that Colombia was ‘economically hard and insecure’.¹⁸⁶

This is not to suggest that the particular economic situation of EDVs was necessarily better in the neighbouring countries than it had been in Colombia. As Colombian refugees and asylum-seekers, EDVs experienced barriers in fully integrating themselves into the economies of these countries, particularly in the larger cities and towns. The description by one asylum-seeking family in Venezuela illustrates the misery in which such EDVs could find themselves:

Since our arrival, the situation has been very hard in Venezuela. The lack of documentation complicates access to any kind of subsidy or work. We don’t have stable housing – we are living in *ranchos* [temporary structures] and constantly moving house – and we cannot get credit. Our economic situation is critical.¹⁸⁷

The common factor among those interviewed was that, not only was the work available to them normally informal, unskilled, sporadic and poorly paid, but (even as recognised refugees) they were not often able to access the facilities that they required

¹⁸³ Interview 43.

¹⁸⁴ Interview 132.

¹⁸⁵ Interview 111.

¹⁸⁶ Interview 36.

¹⁸⁷ Interview 133.

in order to start or develop their own small businesses.¹⁸⁸

Yet the problems were sometimes far more serious. One woman described how she had lived illegally with her small children for several years in Quito, Ecuador, rather than return to persecution in Colombia:

We had to lead a hidden life with no documents and no help. It was difficult to survive – I did anything I could.... In my country I could ask for my rights, but here I lost the right to anything. Worse things happened to me here than in Colombia, I was raped here but the cases were just archived. I try to forget and just live in the today... You only leave your country because it is all finished there. It is terrible to be Colombian but not able to return to your own land.¹⁸⁹

This case of rape was not unique among the EDVs interviewed.¹⁹⁰

However, almost without exception, the EDVs interviewed complained of work difficulties and/or the related problem of access to housing and took the position that reparation should be focused upon improving these conditions. The views of a male asylum-seeker living in a border town in Venezuela are typical in this regard:

Although I have some work as a mechanic in a workshop here, I have to pay a high rent for my home, which floods when it rains... I had my own workshop in Colombia but had to sell it at a low price, and I left all the tools behind... Most of all I would ask for a house and the chance to start my own workshop again.¹⁹¹

These sentiments were common even among refugees and others who were otherwise relatively integrated in local society, and EDVs emphasised that overcoming these factors was crucial in order to regain the balance that had been lost from their lives.

Interviewees nonetheless differed as to appropriate means of overcoming these obstacles to work and housing. Many latched on to the payment of compensation as a panacea for the barriers that created sometimes pressing economic demands in their everyday lives.¹⁹² For instance, one older refugee in Ecuador argued:

¹⁸⁸ This situation is corroborated by other reports (Gottwald, M., 'Protecting Colombian Refugees'; Fundación Regional de Asesoría en Derechos Humanos INREDH, *El refugio en el Ecuador*, Quito, Imprenta Cotopaxi, 2004; Camacho Zambrano, G., *Mujeres al borde: refugiadas colombianas en el Ecuador*, Quito, UNIFEM, 2005; United States Committee for Refugees and Immigrants, *World Refugee Survey 2009 – Venezuela*, 17 June 2009; Laverde, Z., and Tapia, E., *Tensión en las fronteras: un análisis sobre el conflicto armado, el desplazamiento forzado y el refugio en las fronteras de Colombia con Ecuador, Venezuela y Panamá*, Bogotá, CODHES, July 2009; Schussler, S., *Entre la sospecha y la ciudadanía: refugiados colombianos en Quito*, Quito, FLASCO, 2009; Refugee Council USA, *Living on the Edge: Colombian Refugees in Panama and Ecuador*, 2011).

¹⁸⁹ Interview 58. At the time of the interview, she had been recognised as a refugee under the terms of the *registro ampliado*.

¹⁹⁰ The research included another case of a persecuted Colombian woman who lived constantly depressed by the sexual violence committed against her with impunity in Panamá rather than return to Colombia (Interview 85).

¹⁹¹ Interview 124.

¹⁹² On compensation, see text below.

At my age, the Colombian government should assign me a sum of money so that I could buy lands or start a shop here.¹⁹³

The idea that the payment of money would, in itself, provide the conditions to restore stability in the lives of the EDVs was particularly common in Venezuela, where access to public services is not restricted for foreigners to the same extent as in Ecuador and Panama.

By contrast, for EDVs in Ecuador and Panama, alongside any compensation, what was most important was the issuing of documentation that would allow them to gain access to basic economic opportunities in the neighbouring country.¹⁹⁴ The testimony of three differently located refugees illustrates the common ways in which inadequate documentation limited the work and advancement opportunities necessary in order to regain stability in their lives:

I live from what I earn [in the bakery], paying the rent. I wanted to open a bank account but I cannot because I need an Ecuadorian *cedula* [identity card]; the same thing with a driver's license. Whatever the procedure, it turns out that my refugee visa is no good... It would be good for this to be taken into account.¹⁹⁵

It would be good to have an Ecuadorian *cedula*... so that we can open an account in the bank, or get a driving license, or get a loan, or even to get work. At the moment, we do not have a fixed job but are dependent upon the vagaries of working as street vendors.¹⁹⁶

I would want permission to stay [in Panama] for five years, so that the bank is not able to say that we are migrants who could be deported at any moment. With some housing and some capital I could make something of myself and live with dignity.¹⁹⁷

It is thus apparent that even recognised refugees found that inadequate documentation inhibited access to economic opportunities in the form of bank accounts, formal work, driver's licenses, loans to start small businesses, the ability to own land, and housing subsidies. The requirement to renew refugee documentation each year was mentioned as a particular problem since it not only limited access to opportunities but also required a considerable outlay of time and money for those living outside the large cities.¹⁹⁸ For this reason, asylum-seekers tended to aspire to *cedulas* from the host country over refugee documentation.

¹⁹³ Interview 48.

¹⁹⁴ Interview 73. These consequences of inadequate access to documentation for refugees and asylum-seekers in these countries are identified by other studies (e.g. Nava, B., *Derechos humanos de los refugiados: situación actual en Venezuela*, Caracas, Servicio Jesuita a Refugiados Venezuela, 2008; Defensoría del Pueblo de Ecuador, 'Acceso al sistema financiero de la personas refugiadas en Ecuador', *Informe temático*, No. 3, 2010).

¹⁹⁵ Interview 49.

¹⁹⁶ Interview 44.

¹⁹⁷ Interview 90.

¹⁹⁸ Interview 64.

Contrary to the assumptions about return underpinning parts of the international law and, some have argued,¹⁹⁹ earlier drafts of the Victims' Law, the Colombian EDVs interviewed constructed the concept of reparation in terms of re-establishment of their disrupted lives rather than repatriation. Moreover, given the continuation in Colombia of the conditions giving rise to their displacement, most saw the most positive chance of achieving stability again as lying in the host country.

These simple facts suggest that the Colombian government should consider measures to secure conditions in which this process of re-establishment can take place. This could be in the form of the payment of compensation, or through bilateral measures to assist their citizens in securing the rights necessary in the host country to begin to rebuild their lives, perhaps through facilitating access to regularisation. The competence of the Colombian government to consider such measures is clearly established by the Victims' Law, which does not limit the measures of restitution to those specified on the face of the law.²⁰⁰ This is likewise the case for measures of rehabilitation, satisfaction and non-repetition,²⁰¹ which could equally provide the legal basis for such actions.

Returns and land restitution

Given the EDVs wholesale rejection of the possibility of return to their region of origin in Colombia, it is hardly surprising that the restitution of lands was of no interest to them. In the common scenario of the lands having been left abandoned following displacement, EDVs expressed the wish to receive compensation for the lands,²⁰² but absolutely no desire to have the actual lands restored to them. Equally, in cases where EDVs had sold their lands at a low price following displacement, there was no interest in restitution.²⁰³

Where lands had been occupied by an armed group or sold without permission by neighbours, interviewees utterly dismissed the idea of reclaiming the lands give the dangers involved.²⁰⁴ The daughters of one refugee in Ecuador had tried to return to her lands in Caldas, Colombia, but had been seriously threatened by the *guerrilla*.²⁰⁵ The words of a refugee in Panama encapsulated the general feeling among EDVs: 'The restitution of lands has no relevance'.²⁰⁶

Nonetheless, the local integration difficulties in Ecuador, Panama and Venezuela meant that a handful of EDVs manifested an interest in return to another part of Colombia as a reparation measure should the government provide sufficient resettlement assistance.²⁰⁷ These were mainly older persons who still found it difficult

¹⁹⁹ Serralvo, J., 'Internal Displacement, Land Restoration, and the Ongoing Conflict in Colombia', *Journal of Humanitarian Assistance*, 14 June 2011.

²⁰⁰ Articles 69, 71.

²⁰¹ Articles 135, 139, 149.

²⁰² See below.

²⁰³ Interviews 43, 48, 66, 70, 74, 75, 77, 129.

²⁰⁴ Interviews 40, 47, 64, 68, 69, 85, 88, 91, 122.

²⁰⁵ Interview 45.

²⁰⁶ Interview 64.

²⁰⁷ Interviews 26, 35, 42, 47, 48, 49, 136.

to integrate after longer periods of time as recognised refugees. For instance, an older couple from Caquetá stated that after various years in Ecuador:

We are living in a critical situation... If we can get help from the Colombian government, like a home to arrive to so we can work, we would return... The problems were a long time ago and we would go to a different part of Colombia... We feel very alone here and our families are there – maybe they can help us.²⁰⁸

The integration difficulties could equally be of a cultural nature. For instance, a middle-aged businessman from Huila who had managed to gain a reasonable degree of economic stability in his six years in Venezuela complained that:

I had a life [in Colombia], I laughed there. My name and word were worth something. This is finished – my refugee visa does not even allow me to open a bank account here. I feel diminished. My personal development has stagnated... If there was help I would think of returning to another part of [Colombia], because no one would know me. I could do really well there. ... I am not comfortable here – there are lots of cultural barriers to working – there they respect a person's word in business, here it is different.²⁰⁹

In each case, the integration difficulties that left the EDV feeling diminished and isolated as a person was the crucial factor in the disposition towards repatriation as a form of reparation, combined with the perception of a reduction in risk in Colombia and the requirement that economic help with re-establishment in Colombia be forthcoming.

Indeed, some EDVs had already attempted to return to other parts of Colombia through the Colombian government's voluntary repatriation programme.²¹⁰ In one case, after experiencing long delays and initial lack of knowledge of the programme at the Colombian consulate, the EDV was told that she had first to return to Colombia and register as an internally displaced person in order to be eligible for assistance with voluntary repatriation.²¹¹ In another case, the applicant never received a response.²¹² On the basis of these experiences, both women now discounted the idea of returning to Colombia as a form of reparation. These appear not to be isolated cases.²¹³

A Colombian consular source confirmed that the programme agency in Bogotá appeared to expect applicants to register as IDPs in Colombian territory before they could access the programme. The same source expressed concerns about not only the

²⁰⁸ Interview 42.

²⁰⁹ Interview 136.

²¹⁰ This programme is essentially an extension overseas of the voluntary return/resettlement programme for internally displaced persons within Colombia. Specifically, the *Protocolo de retorno voluntario de connacionales en el exterior (Protocol for the Voluntary Return of Nationals Overseas)* is based largely upon the Acción Social, *Protocolo para el acompañamiento a los procesos de retorno o reubicación de población desplazada (Protocol for the Accompaniment of Return or Relocation Processes by the Displaced Population)*, version 2, 9 May 2006.

²¹¹ Interview 8.

²¹² Interview 58.

²¹³ Only thirteen cases in the whole of Ecuador had voluntarily repatriated with this programme over the previous three years (Interview 15).

long delays in the process but also the way in which it had generated unfair false expectations among the refugee population.²¹⁴ If return is to be a viable form of reparation, the Colombian government will need to address the institutional and credibility problems currently associated with its voluntary repatriation programme.

Finally, changes in the wider security and economic conditions in the region could heighten future interest among EDVs in repatriation as a form of reparation. Firstly, various interviewees indicated that they would be keen to return to Colombia should the armed conflict cease.²¹⁵ This result chimes with a study that asked refugees in Ecuadorian cities their views on repatriation: alongside the 15 per cent who were apparently prepared to return to Colombia, 35 per cent of those surveyed stated that they would return if conditions in Colombia changed.²¹⁶

Although the significance of these figures should be read in light of the greater integration challenges that exist in many Ecuadorian cities as opposed to other parts of the country, which may result in a greater disposition to repatriation among the population sampled,²¹⁷ there are at least sectors of the EDV population who would consider repatriation as a form of reparation should the conditions of violence in Colombia change substantially.

Secondly, given the mixed motives expressed by many EDVs in rejecting repatriation as a form of reparation, it seems likely that changes in the wider economic circumstances of the countries of asylum could influence their decisions over the appropriate form of reparation. Sources working directly with refugee populations reported that, as the previously favourable economic situation in Venezuela had begun to deteriorate over the past two years, increasing numbers of Colombian asylum-seekers had begun to talk about the possibility of an imminent return.²¹⁸

This tendency was less evident in Panama and Ecuador, in spite of the difficult economic conditions in which some sectors of the population lived.²¹⁹ Nonetheless, it seems likely that any future deterioration in the economic situations of those countries would result in an increased interest among certain sectors of the Colombian populations living there in any repatriation assistance offered as a form of reparation.

Read together with the understanding of reparation as personal and social re-establishment, these observations suggest that perceptions of what counts as adequate reparation are rarely fixed in nature but need rather to respond in a certain degree to the victim's current situation.

This has clear implications for any government seeking to make reparation to individuals for violations of the international law for the protection of the human person. It points not only to the imperative of defining the specific reparation measures in consultation with the different constituencies of victims, but also taking a longer

²¹⁴ Interview 30.

²¹⁵ Interviews 86, 90, 91, 158.

²¹⁶ Interview 15; for a summary of this research, see Facultad Latinoamericana de Ciencias Sociales (FLASCO), *Refugiados urbanos en Ecuador: estudio sobre los procesos de inserción urbana de la población colombiana refugiada, el caso de Quito y Guayaquil*, Quito, FLASCO, May 2011.

²¹⁷ Interview 8.

²¹⁸ Interview 99.

²¹⁹ Interviews 9, 15, 62.

term perspective regarding how those notions might change in the future through foreseeable shifts in the wider circumstances. This raises difficult questions about the balance between the views of victims and governments in defining specific measures of reparation. Regardless, in the Colombian case, it is clear that the government will have little success in providing reparations through repatriation unless it is able to address the shortcomings widely known among EDVs in its current voluntary repatriation programme.

Compensation for damages

Alongside the restitution measures discussed above, EDVs consistently emphasised the need for compensation from the Colombian government for the damages that they had suffered. These were generally understood in terms of compensation for property lost as a result of their forced displacement or for the deaths of relatives in Colombia (i.e. material damages). However, many also felt they were owed compensation for the suffering that they had experienced outside Colombia as a result of having to leave their own country (i.e. moral damages). Interviewees' conception of reparation for these damages was entirely in terms of the payment of compensation to individuals or families and, even when pushed, they expressed no interest in other measures of satisfaction or in any kind of symbolic reparations.

The lack of any interest in additional measures of satisfaction may be due to various factors. Firstly, EDVs strongly associated the term 'reparation' with the idea of *pagar la muerte* ('to compensate for a death') as a result of prior knowledge and/or experience of the payment of monetary compensation to victims of the armed conflict under existing law in Colombia.²²⁰ Secondly, even the one EDV who expressed a desire for measures of satisfaction – for being falsely accused by the UC-ELN *guerrilla* of having links with the paramilitaries - was sceptical about the likelihood of such measures eventuating:

[P]eople think I participated in massacres... My good name is sullied. How can the government rescue my good name? They are not going to put me on television and re-establish my good name. They will give money but the rest doesn't matter to them. The best they can do is to give me money.²²¹

Thirdly, there appeared to be a relatively high degree of social atomisation among Colombian EDVs, and few cases of displaced communities living together *en masse*. This responded to fears among EDVs that other Colombians might be connected with their persecutors or have the intention of robbing them, as one refugee in Ecuador explained: 'you become very *receloso* [mistrustful] here'.²²² The need for anonymity and the absence of conditions in which to create communitarian proposals probably impeded the development of thinking about other kinds of satisfaction. Put on the spot,

²²⁰ Several of the EDVs interviewed already had direct experience of this framework as a result of other family members having claimed compensation from the state for the deaths of family members (Interviews 50, 109, 135). This understanding was so strong that various less well-educated respondents initially expressed the view that they would or should not be entitled to reparation as they had not lost any family members (Interviews 84, 104, 127).

²²¹ Interview 86.

²²² Interview 47.

even leaders representing EDV constituencies were not able to think beyond measures to bring work or housing to individual community members.²²³

Against this backdrop, the desire to receive monetary compensation is readily explicable not only as the form of reparation most familiar to Colombian EDVs but also due to the economic necessities that most currently faced. Indeed, interviewees were absolutely clear that the primary uses to which they would put any compensation money were to redress the current deficiencies in housing and/or opportunities for them to regain their economic self-sufficiency. For example, a refugee working in an Ecuadorian laundrette explained:

I would use [the money] to set up my own laundrette with a friend because what I earn is not enough to pay the rent; my husband is not working... I would need to buy equipment but we could use the space in the house and offer a home collection service. My daughter wants to keep studying - perhaps she will work with me.²²⁴

Such testimony clearly illustrates the way in which monetary compensation was conceived as a potential means of achieving the social and economic stability that EDVs considered should be the focus of reparations.

The pecuniary damages for which EDVs felt they were due compensation were in some respects similar or identical to those suffered by victims of the Colombian conflict who had not left the country. For instance, those who had lost lands and other property in Colombia were absolutely clear in their expectation that the Colombian government should compensate these material losses.²²⁵

Many of the complications about which they had concerns were, however, similar to those of victims within Colombia: lack of formal title or documentation for the lands;²²⁶ lands, houses and businesses that had been sold or exchanged at a fraction of their true price owing to the need to leave quickly;²²⁷ lands on which the balance of the sale had been partially paid, but the lands had been recovered by their original owners after the instalments had lapsed following displacement;²²⁸ lands located in regions which were so remote or dangerous that even the EDV had been unable to sell the lands following displacement;²²⁹ and lands and houses occupied or sold by neighbours,²³⁰ or squandered by relatives.²³¹ It was reported that other refugees had expressed concerns about lands where the taxes had gone unpaid following displacement.²³² Yet all felt that some level of compensation should be paid for the

²²³ Interviews 8, 31, 64.

²²⁴ Interview 47.

²²⁵ The only exception was where the lands had been occupied by a non-state armed group, in which case EDVs worried that the mere fact of claiming compensation of those lands would place them and their relatives still living in Colombia at risk of reprisals (Interviews 40, 47, 88, 91).

²²⁶ Interview 38.

²²⁷ Interviews 43, 48, 66, 70, 74, 75, 77, 129.

²²⁸ Interview 57.

²²⁹ Interviews 36, 64.

²³⁰ Interviews 64,, 68, 69

²³¹ Interview 90.

²³² Interview 7.

property lost in these situations: ‘Everything that we had worked for in Colombia is now lost’.²³³

Nonetheless, two kinds of material damages for which EDVs felt they should be compensated were more particular to the external displacement that they had suffered. Firstly, many EDVs had incurred significant expenses in order to reach the neighbouring country. This was the case even for poorer families living close to the Colombian border which had fled a relatively short distance to neighbouring countries. For example, an asylum-seeker who had recently crossed over into an Ecuadorian border town told how:

What we had in Colombia we sold and used to get here [in a bus and a boat]; people here lent us things... We arrived with hardly anything here.²³⁴

By contrast, in order to reach the greater safety of more distant locations such as Panama City, even more economically self-sufficient individuals had to sell their belongings,²³⁵ work elsewhere in Colombia for a time,²³⁶ or borrow money from relatives and friends in order to gather the necessary funds to buy their airfare.²³⁷

Secondly, once in the neighbouring countries, interviewees who had been professionals or wealthy citizens in Colombia all found themselves working in non-professional positions for low wages. As they were now unable to exercise their former profession, most turned instead to *el rebusque*.²³⁸ A formerly wealthy cattle-rancher described his nine years in Panama City:

I have no fixed work so I work in whatever I can find – making food to sell in the street, doing cleaning, all those jobs that are too insignificant for Panamanians – it is very hard. In Colombia, my [economic] situation was defined. Here I am just one more worker.²³⁹

An elderly commercial lawyer seeking asylum in Panama gave a similar account:

I lived well [in Colombia] - I used to earn US\$3000/month; here I clean apartments to survive. I make about \$300/month. In Panama I cannot practice as a lawyer.²⁴⁰

Sometimes, the restrictions on practising one’s profession also reflected the need to live anonymously, as a prominent lawyer now living on family handouts in Panama explained:

As a lawyer I need to be known by the public in order to attract work. I cannot do this here because of the risks [of being found by

²³³ Interview 58.

²³⁴ Interview 39.

²³⁵ Interview 87.

²³⁶ Interview 83.

²³⁷ Interview 88.

²³⁸ From *rebuscarse la vida* – ‘to find whatever work one can in order to earn a living’.

²³⁹ Interview 86.

²⁴⁰ Interview 92.

persecutors].²⁴¹

These EDVs unanimously felt that they were owed substantial material compensation from the Colombian government for forcing them to flee to countries where the wages that they earned were a marked step down from those which they had considered normal in Colombia.

Once refugees, such persons at least had a legal right to work, but until formally recognised this was not the case. Particularly in Panama, where controls were more strictly enforced than in Ecuador and Venezuela, those seeking asylum were reduced to living off savings or working invisibly in the informal sector. A trader who had spent two years awaiting a decision on his asylum application described how he provided for his family in Panama City:

It has been very hard – businesses will not give you work and so you work informally. Sometimes they don't even pay you for the work you have done, but I have to support my children... We have had to endure hunger and anguish in order to pay the rent; our condition has been deteriorating...²⁴²

This was reflected in the testimony of a former sociologist: 'we live here as paupers'.²⁴³ Interviewees strongly felt that reparation was due for the fact of their being forced to live in such diminished material circumstances: 'We do not live here [in Ecuador] as we lived in Colombia – it has been very difficult'.²⁴⁴

This loss of earnings also manifested itself in the diminished capacity of EDVs to meet the financial obligations that continued to exist for them in Colombia. The following testimonies from Colombian refugees and asylum-seekers give a sense of the nature of these ongoing financial obligations:

My children in Colombia would need the money from any compensation. I haven't been able to pay the mortgage and I will lose the house soon.²⁴⁵

I would be very interested in compensation because my mum and dad in Colombia are invalids and I need to support them, as well as my family here.²⁴⁶

Whilst I am trying to find a way to survive here, my economic obligations keep on going in Colombia; I have to pay for the house, the car and the family – the father of my grandson was killed by the paramilitaries and I have to look after the boy now.²⁴⁷

²⁴¹ Interview 91.

²⁴² Interview 83.

²⁴³ Interview 85.

²⁴⁴ Interview 57.

²⁴⁵ Interview 85.

²⁴⁶ Interview 88.

²⁴⁷ Interview 92.

Resources from the sale of our business in Colombia arrive here every so often. But we arrived here with nothing and had to buy everything again. We also cannot put to one side our commitments in Colombia – I have a sick mother whose healthcare I pay for.²⁴⁸

This was particularly the case for former professionals from Colombia, who had often been the breadwinners and responsible for supporting a wider family network within the country.

Alongside the question of compensation for material damages, EDVs described three distinctive forms of suffering that they had experienced as a result of being forced to leave the country that they believed should be redressed through compensation. Firstly, they felt reparation was due for the psychological challenge of having ‘to start from zero once again’ in a new country.

I not only lost all my houses and cars, because of the suffering I look 50 [years old] even though I am only 43. My children are foreigners... I had to start again from zero in a strange country. I need economic reparation for a dignified life... I arrived here with nothing and had to enter the *rebusque* – as a lone woman it was difficult to get money.²⁴⁹

The restrictions on working compounded this suffering, as one asylum-seeking woman in Panama City, who had been displaced previously within Colombia by the FARC-EP, explained:

In Colombia, after displacement, you can be working the next day and this helps psychologically. But without continuing to work, you think a lot about your expenses, you family and your life. It has been very hard emotionally here... If it wasn't for the persecution, they would have to pay you a lot of money to make you suffer this.²⁵⁰

In this regard, others mentioned the indignity of having to flee one's own country like ‘a criminal’²⁵¹ or like ‘thieves in the night’,²⁵² sometimes on the advice of Colombian security services, which admitted their lack of capacity to offer protection against the persecution.

Secondly, the inability of most EDVs to return to Colombia contributed to the disintegration of family links. A good number of the interviewees manifested deep sadness at having lost contact with their families in Colombia, as described by this refugee in Ecuador:

I would like [the government] to take account of the sadness that we have experienced – not just for the deaths in our family but also

²⁴⁸ Interview 93.

²⁴⁹ Interview 46.

²⁵⁰ Interview 93.

²⁵¹ Interview 87.

²⁵² Interview 90.

because we cannot see our family because it is not safe to go back.²⁵³

In other cases, the nuclear families of EDVs had disintegrated as a result of the challenging economic and social conditions that EDVs faced in the neighbouring countries. One man who had spent two years living in very difficult conditions before finally being granted refugee status in Venezuela had been left by his wife described his feeling of being ‘very isolated here’.²⁵⁴

Finally, this sense of personal isolation in the neighbouring countries appeared to be particularly accentuated for professionals who were unable to continue practising their life-long vocations. The feelings of disorientation that their loss of social status produced were described by one former lawyer:

I want compensation for [material damages] and moral damages – the uprooting, for being far from my lands and family, being alone here, the sadness, for having left my profession and the lack of recognition as a person. Everyone here assumes that an asylum-seeker is from a low social status. I am a professional with a social status.²⁵⁵

Another former lawyer described himself as ‘the living dead’, explaining that being distanced from his family and his profession ‘is worse than death’.²⁵⁶

The payment of monetary compensation was thus seen by externally displaced victims as a crucial component of any reparation offered by the Colombian government. This is, however, not to suggest that there was no ambivalence on the part of interviewees over the idea that money could serve to repair the material and moral damages which they had experienced.

One woman described the loss of her material lands as a loss of ‘culture’ which money could not easily repair,²⁵⁷ whilst others expressed doubt over whether money could ever stand in for suffering.²⁵⁸ Nonetheless, respondents coincided in agreeing that such monetary compensation would be a welcome boost to help them re-established their lives. The importance of compensation for EDVs suggests that Colombian government should recognise the various material and moral damages particular to EDVs in the regulations on administrative compensation that the Victims’ Law requires it to produce within six months.²⁵⁹

Colombian externally displaced victims and procedural access to reparations

In addition to interviewing Colombian externally displaced victims in Ecuador, Panama and Venezuela about their differing perceptions on what would constitute adequate reparation, the research also investigated their opinions on how they would

²⁵³ Interview 58.

²⁵⁴ Interview 103.

²⁵⁵ Interview 92.

²⁵⁶ Interview 91.

²⁵⁷ Interview 85.

²⁵⁸ Interview 67.

²⁵⁹ Article 132.

go about claiming any eventual reparation. Perhaps surprisingly (given the asylum claims submitted by most respondents), the overwhelming preference was to approach Colombian diplomatic or consular authorities in the countries in which they were residing. The viability of initiating reparation procedures from within Colombia – whether through returning briefly or through a representative or proxy – was not a viable solution in the eyes of most EDVs.

All but two of those interviewed were happy to approach the Colombian authorities in their country of residence to process a reparation claim. Indeed, many EDVs had at some point received substantive consular assistance with other Colombian administrative procedures, even after claiming or receiving asylum.

Even the two refugees who stated that they would never approach the consulate did so only because they feared that such contact might end up revealing their whereabouts to their non-state persecutors in Colombia.²⁶⁰ Indeed, access to the city-based consulates was the only significant concern among EDVs, particularly among PTH in Panama whose freedom of movement was very restricted.²⁶¹ This generally favourable disposition reflects the fact that many interviewees did not view the Colombian state as a persecutor, merely as unable to provide protection against third party persecutions. It is clear that the citizen-state relationship had not broken down in the way traditionally envisaged by refugee law theory.

Few of the EDVs interviewed had lawyers or professional links in Colombia which would have allowed them to submit an application through a legal representative. Moreover, interviewees were generally sensitive to actions that would place their families back in Colombia at risk, and so asking family members, or even colleagues or friends, to pursue reparation claims on their behalf from within Colombia was not generally seen as a viable method.

However, the one exception was an individual whose profile was of such direct interest to his persecutors that he had been pursued on various occasions in the country of asylum by his persecutors and was at the time awaiting resettlement in a third country by UNHCR. He argued that any claim for reparation that he made would have to go through a lawyer in order to stand the greatest chance of keeping his location secret.²⁶² This indicates the importance of keeping this route open to EDVs even if it is a means of access that few will ultimately use. Nonetheless, absent assistance from third parties, it may equally be assumed that few EDVs will opt to claim compensation through independent judicial proceedings as opposed to the administrative one contemplated in the Victims' Law.²⁶³

Similarly, there was little interest in the proposal that EDVs return to Colombia in order to initiate or participate in reparation proceedings. None of those interviewed had returned to participate in proceedings under the Justice and Peace Law.²⁶⁴ Whilst a number of respondents had returned to Colombia for short periods of time to attend to

²⁶⁰ Interview 23, 85.

²⁶¹ Interviews 65-77.

²⁶² Not numbered for protection of interviewee.

²⁶³ See Articles 132-134 of the Victims' Law.

²⁶⁴ There are, however, indications that some survivors of the Mampujan and Valle Porteto massacres living in Venezuela had either done so directly or participated through the Colombian *Defensoría del Pueblo* (Interview 2).

family emergencies (usually with permission of the reception state),²⁶⁵ most were reluctant to return to lodge a reparation claim, citing fear of persecution and lack of travel funds. Refugees and asylum-seekers additionally feared that if they returned the state of asylum would treat them as having abandoned their claim to protection.

An interesting exception to this trend was found in certain frontier towns on the Venezuelan border, where some Colombian EDVs crossed the border with frequency and had even undertaken administrative procedures there.²⁶⁶ Because of Venezuelan controls on foreign currency exchange, observers suggested that if compensation were collected and then converted into Venezuelan currency through the informal market on the Colombian side of the border, the value received would be approximately twice as great as if the exchange were done through formal channels within Venezuela.²⁶⁷

Bilateral relations and reparation for Colombian externally displaced victims

It is important to consider the implications of the offer of reparation within the context of bilateral relations between Colombia and its neighbours. Over the past 10-15 years, Colombia has been an ‘uncomfortable neighbour’ at the regional level, as the spill-over effects of the armed conflict have reached neighbouring countries in the form of violence, criminality and massive refugee flows.²⁶⁸

The relationship with Venezuela and Ecuador was particularly difficult during the administrations of ex-president Uribe in Colombia (2002-2010), with a rupture in Colombia’s diplomatic relations with these countries caused by its 2008 bombardment of a FARC-EP camp in Ecuadorian territory and its 2010 criticism of Venezuela in the OAS for hosting *guerrilla* camps. Since the arrival of incumbent Colombian president Santos (2010-present), diplomatic efforts have resulted in a significant improvement in these inter-state relations and important bilateral discussions on themes related to the armed conflict have been held.

Bilateral mechanisms have long existed between Colombia and the three neighbouring states to address forced displacement in the frontier zones, although these have rarely been activated. A joint Frontier Affairs Sub-Commission, part of the Panama-Colombia Neighbourly Commission mechanism, was formed in response to massive arrival to the Darién of refugees from north-west Colombia in the 1990s and has had only sporadic use.²⁶⁹ Memoranda of Understanding on joint responses to displacement in border regions were completed by Colombia with Ecuador (2000) and Venezuela (2003).²⁷⁰ These were never activated, primarily as a result of the deterioration in

²⁶⁵ Interviews 47, 48, 49, 50, 58, 71, 90, 101, 108.

²⁶⁶ Interviews 111, 127, 128.

²⁶⁷ Interview 139.

²⁶⁸ Interview 144. For a study of this earlier period, see Gottwald, M., ‘Protecting Colombian Refugees’. On Ecuador in particular during this earlier period, see Ahumada Beltrán, C., et al., *El desplazamiento forzado de colombianos hacia Ecuador en el contexto del Plan Colombia*, Bogotá, Centro Editorial Javeriano, 2004; Ceballos Medina, M., *Impacto de las migraciones forzadas de colombianos a Ecuador en las relaciones interestatales, 1996-2006*, Medellín, La Carreta Editores EU, 2010.

²⁶⁹ Interview 89.

²⁷⁰ *Memorando de entendimiento entre los viceministros de relaciones exteriores de las Repúblicas del Ecuador y de*

bilateral relations.²⁷¹

Indeed, the *de facto* ‘open arms’ approach towards Colombian refugees adopted by Venezuela and Ecuador served a useful political function in highlighting the humanitarian cost of the Uribe government’s right-wing policies.²⁷² Panama, by contrast, responded to the refugee flows with relative indifference, helped by the inhospitable land route through the Darién region. The Colombian position was to deny the extent of the refugee problem, consonant with Uribe’s negation of the very existence of an armed conflict in Colombia.²⁷³

Recent bilateral meetings between Colombia and Panama and Ecuador have been positive in tone, but have concentrated more on issues of cross-border security and military cooperation than humanitarian themes such as the refugee populations in the neighbouring countries.²⁷⁴ Although the refugee issue has not figured prominently in Colombia’s recent bilateral talks with Panama and Venezuela,²⁷⁵ Ecuador has consistently raised the question of Colombian co-responsibility for the large number of refugees to which it is host.²⁷⁶ This co-responsibility discourse was echoed in the past by Venezuela.²⁷⁷

The Colombian government’s priority is to re-establish positive relations with Ecuador such that it has engaged substantively with the refugee issue but its reaction remains cautious thus far.²⁷⁸ For its part, during these talks, Ecuador uses the invented term *desplazados externos* (externally displaced persons) in order to defuse political sensitivities around any criticism of Colombia’s internal affairs that may be implied by the term ‘refugee’.²⁷⁹ Along these same lines, any future use of the EDV category also has the potential advantage of not requiring Colombia to take a view on whether international protection of the person is necessary

Within this broader political and diplomatic context, interviews with those government officials who had responsibility for refugee themes in Ecuador, Panama and Venezuela produced interesting data about the proposed Colombian Victims’ Law and its implications for EDVs living in those countries.²⁸⁰ In responding to questions about the

Colombia sobre un procedimiento para el tratamiento del fenómeno del desplazamiento en zonas de frontera (Memorandum of Understanding between the Vice-Ministers of External Relations of the Republics of Ecuador and Colombia about a procedure to deal with the phenomenon of displacement in border zones), 24 August 2000; *Memorando de entendimiento entre la República Bolivariana de Venezuela y la República de Colombia sobre el tratamiento de las personas desplazadas en territorio colombiano que llegan a la frontera venezolana* (Memorandum of Understanding between the Bolivarian Republic of Venezuela and the Republic of Colombia about the treatment of persons displaced within Colombian territory who arrive at the Venezuelan border), 23 April 2003.

²⁷¹ Interviews 4, 9, 54, 107, 112.

²⁷² Interview 7.

²⁷³ Interview 6.

²⁷⁴ Interviews 14, 80, 144.

²⁷⁵ Interviews 82, 107.

²⁷⁶ Interview 5. Indeed, Ecuadorian president Correa is reported to have made the establishment of the Bi-national Commission on refugees a precondition for bilateral talks with Santos (Interviews 5, 144).

²⁷⁷ Interview 99.

²⁷⁸ Interview 6.

²⁷⁹ Interview 54.

²⁸⁰ Even if the opinions expressed within those interviews do not necessarily represent the official policy of the respective states, they do provide an important indication of how key decision-makers in neighbouring states view the question of reparation for Colombian EDVs.

proposal to make reparation to the victims of the Colombian armed conflict, senior refugee officials in Ecuador, Panama and Venezuela were absolutely clear that they regarded the question of reparation for victims of the Colombian armed conflict as a matter for the Colombian state in the management of its internal affairs.

Nonetheless, on a personal level, all were fundamentally supportive of the idea that victims of the armed conflict should receive reparation. The fact that there existed a large measure of good-will towards the Victims' Law on the part of these government officials on humanitarian grounds is important and framed the particulars of their more specific views on the question of reparation for refugees and other EDVs.

However, specifically on the question of refugees, senior officials in all three countries were keen to emphasise that their states had shouldered a heavy burden by receiving large numbers of refugees from Colombia. All highlighted the economic resources that these countries had destined towards hosting Colombian refugees since the start of the conflict, as well as mentioning the social problems that they felt this large influx of refugees had exacerbated within neighbouring countries. Despite some assistance from the international community, state officials emphasised that the majority of resources derived from their own national budgets. As one senior Ecuadorian official argued:

The international community invests 90 per cent of the resources in Colombia and only 10 per cent in Ecuador.²⁸¹

This reflected the general sentiment that Colombia had not been sufficiently proactive in addressing the refugee issue and assuming its share of a burden that was intrinsically of its own making. Yet it leaves open the possibility that further improvement in bilateral relations might derive from efforts by the Colombian government to address the situation of EDVs.

As one outcome of this thinking, officials in all three countries expressed a general interest in the repatriation of refugees to Colombia. At the inter-state level, the Bi-national Commission on refugee issues established by Colombia and Ecuador is considering the possibility of voluntary repatriation by refugees. In this arena, Colombia has proposed pilot voluntary return projects under the *Retornar es vivir* (To Return Is To Live) programme that it already uses to promote and facilitate IDP returns. At the time of fieldwork, this proposal had not advanced substantially, given the continuing generalised insecurity in southern Colombia.²⁸²

Nonetheless, Colombia is extremely keen to promote the voluntary repatriation of the embarrassing mass of refugees living in neighbouring countries.²⁸³ Where the possibility of return as a form of reparation for EDVs was canvassed, the response of senior officials – not only in Ecuador, but also in Panama and Venezuela – was that although the repatriation of large numbers of Colombians would be desirable from the point of view of their states' interest, given the security situation in Colombian, such repatriations would have to be strictly voluntary and would, as a result, be unlikely to

²⁸¹ Interview 54.

²⁸² Interview 15.

²⁸³ Interviews 3, 6.

materialise.²⁸⁴

There were two aspects to the question of compensation for EDVs that, whilst legally distinct, might be confused in practice. On the one hand, Ecuador has long maintained that Colombia should compensate it for the recourses that the Ecuadorian state has had to divert towards supporting large numbers of Colombian refugees.²⁸⁵ Within the Bi-national Commission on refugee issues, Colombia appears to have tried to meet this demand by proposing development programmes in the border areas where forced displacement has its greatest impact, although this has not yet been taken forward in practice.²⁸⁶ Ecuadorian officials were keen to emphasise that, in talking about compensation for displaced Colombians, this should remain on the table.²⁸⁷

On the other hand, and distinct from the question of inter-state reparations, is the issue of compensation to individual EDVs for their suffering which is the focus of this paper. Crucially, officials in all three countries expressed positive support for the possibility of monetary compensation for Colombian EDVs living in their countries.²⁸⁸ A senior Venezuelan official stated that

The government would look favourably upon compensation for [EDVs] in Venezuela because they have nothing; also, improved conditions would lead to better behaviour.²⁸⁹

Meanwhile, a senior Panamanian official pointed out that compensation to Colombian EDVs would reduce the burden on the Panamanian government.²⁹⁰ In this sense, compensation for individual EDVs would indirectly help to mitigate the economic consequences of hosting refugees for neighbouring countries, suggesting that the interests of states and those of individual EDVs are not incompatible in this case.

Refugee officials were mostly in favour of the further regularisation of refugees and undocumented EDVs by the country in which they found themselves. Yet even those who indicated a preference for a permanent migratory solution to the problem recognised that this would ultimately be decided by the respective domestic legislative body according to its own political priorities.²⁹¹

Nonetheless, the underlying relations of fraternity that existed between their states and that of Colombia have been frequently acknowledged. Indeed, a significant number of special laws to offer more stable forms of immigration status to different classes of Colombians living in these countries have been adopted over the past twenty years, including as a result of reciprocal agreements with Colombia.²⁹² This indicates a firm

²⁸⁴ Interviews 54, 82, 137; confirmed by sources close to Ecuadorian government (interviews 15 and 51).

²⁸⁵ Interviews 14, 51, 54.

²⁸⁶ Interview 15.

²⁸⁷ Interviews 10, 54.

²⁸⁸ Interviews 54, 97, 137.

²⁸⁹ Interview 137.

²⁹⁰ Interview 97.

²⁹¹ Interviews 55, 60, 89.

²⁹² For instance, in Panamá, on an exceptional basis *Ley 25 de 2008* (Law 25 of 2008) offered permanent residence to refugees subject to certain conditions. In Ecuador, Decree 3301 of 1992 permitted applications for indefinite residence after three years with refugee status, after which the procedure for naturalisation could be commenced (Article 31). Massive regularisation campaigns for

basis upon which the Colombian state could seek to negotiate on a bilateral basis an improved set of rights for those whom it recognises as EDVs in neighbouring countries.

The perspectives of these officials on the procedural aspects of reparation for Colombian EDVs were equally enlightening. It was recognised that Colombian refugees frequently availed themselves the Colombian consular facilities, and officials saw no particular problem should EDVs continue to do so for the purpose of securing reparation. Cessation was not an issue in this regard. However, temporary return to Colombia by Colombian asylum-seekers or refugees in order to claim reparation or participate in proceedings was seen as less straightforward.

Failure by the EDV to apply for permission to return to the country of origin, regardless of the motive for the return, was seen as a ground for reviewing or revoking refugee status in line with domestic legislation.²⁹³ This is not in line with the grounds for cessation of refugee status under international law. Moreover, officials indicated that although reparation would be viewed as an adequate reason to permit return, they would not permit a refugee to return where security risks persisted regardless of the desire to return on the part of the refugee. Finally, the existing delays in the assessment of such applications would likely to be exacerbated if large numbers applied simultaneously.

It thus appears that, to the extent that the interviewees' responses reflect official thinking in this area, neighbouring states would generally be highly receptive to the reparation of EDVs living on their territories. They perceive their duties in this regard as limiting to ensuring that refugees are not given permission to return or forced to repatriate in violation of the non-*refoulement* rule.

Nonetheless, changes in the regional or domestic politics of these countries could impact negatively upon this openness. The international political utility of hosting Colombian refugees is clearly reduced in the face of improved relations with Colombia.²⁹⁴ Particularly in Ecuador, the government is facing a backlash from the media and certain sections of society about its openness to Colombian refugees and has recently adopted harsher legislation in this area.²⁹⁵ In coming years, a change of president in either Ecuador or Venezuela could well reopen the debate about the nature and scope of refugee protection.²⁹⁶

In these circumstances, knowledgeable observers could not discount that the existence of a reparation programme for EDVs might provide the grounds for wholesale application of the 'changed circumstances' cessation clause or an agreement between Colombia and a neighbouring country to repatriate refugees and other EDVs

Colombians have also been run in both Venezuela and Ecuador in the past (Interviews 54, 107, 118). There is currently a draft proposal to regularise the status of PTH in Panamá developed bilaterally that is about to be presented for approval (Interview 95). This flows from the 2004 bilateral accord between Panama and Colombia to regularise the status of PTH that was renewed by the XIII Meeting of the Panamá-Colombia Neighbourly Commission, *Acta Final (Final Act)*, 1-2 September 2008.

²⁹³ Domestic laws in each of these countries required refugees to apply for permission from the asylum state prior to any return to the country of origin: Ecuador – Decree 3301 of 1992, Article 30; Panamá – Decree 23 of 1998, Article 68; Venezuela – *Decreto 2491 de 2003* (Decree 2491 of 2003), Article 17.

²⁹⁴ Interview 7.

²⁹⁵ Interview 54.

²⁹⁶ Interview 52.

regardless of their subjective voluntariness.²⁹⁷ Such concerns not only indicate the potentially fragile nature of attempts to provide reparation to EDVs in the context of such highly politicised international relations, but also call into question UNHCR's role in these processes.

Conclusion

This paper constitutes a first step towards understanding the potential for the 'transnational' reparation of victims in contexts where the wider circumstances that gave rise to the violation of their human rights remain unchanged. As outlined at the start of the paper, this theme raises a range of interesting and complex questions, of both a legal and a practical nature, which this paper has sought to address.

In this respect, three separate sets of conclusions may be drawn from the foregoing analysis. These concern, respectively, the international legal framework that relates to such reparations, the implications of the empirical study of Colombian externally displaced victims for concepts of reparation, and the practical implications of both these areas for the reparation project initiated by the Colombian government through its adopted of the novel Victims' Law. It is hoped that this research provides a preliminary basis on which governments and other institutions working with refugees and asylum-seekers may approach the question of reparation for externally displaced victims, particularly in relation to Colombia.

As regards the international law framework, the position under human rights law appears relatively straightforward. There are strong grounds for considering that states which cause damage to persons in violation of their international human rights obligations remain bound to provide an effective remedy, even if the victim should leave the territorial jurisdiction of the state. In its procedural aspect, this remedy may take any form so long as it is effective for the right(s) violated and reasonably accessible to the person. The substantive aspect of the remedy should take account of the particularities of the external displacement of the victim, particularly when that person cannot safely return to the state where the violation was inflicted. However, international human rights law imposes relatively little in the way of positive duties upon 3rd party states to facilitate the reparation of any externally displaced victims that they are hosting.

The implications of such reparation for refugee law appear more complex. The 1951 Refugee Convention appears to impose more specific duties upon host states that frame their engagement with reparation for EDVs who are refugees. Nonetheless, the offer and/or receipt of reparation will raise questions about the cessation of refugee status.

In these circumstances, careful attention to the nature of engagement between the refugee and her country of origin will be important. Refugee law is concerned with protection in the present and near future. Where reparation is effectively 'backward-looking' in the form of reparation for past abuse, cessation will generally be inappropriate. Nonetheless, where the reparation has forward-looking elements that

²⁹⁷ Interview 15.

may indicate the resumption of a protective relationship, factors such as the intention of the refugee in seeking such reparations will become determinative.

During the empirical fieldwork, some government officials in countries neighbouring Colombia suggested that the recognition of refugee status by their state should translate into automatic recognition of the person by Colombia as a victim of human rights violations.²⁹⁸ If, in the terms of the ILA Cairo Declaration, states are prepared to recognise that the act of being made a refugee constitutes a serious violation of the person's human rights, then this is a reasonable basis upon which to proceed.

However, caution should be exercised in at least three respects. Firstly, it is a principle of international law that one state's determination of refugee status is not formally binding on other states. Secondly, many EDVs in neighbouring countries, whilst refugees under the Cartagena Declaration definition, would not have satisfied the 1951 Refugee Convention definition, i.e. they had fled generalised conditions or threats rather than personally having been the victim of serious human rights violations. Thirdly, given the forward-looking refugee definition, the absence of refugee status should never be taken as evidence of the absence of past human rights violations.

As regards scholarly and legal concepts of reparation, the empirical research carried out with externally displaced Colombians in Ecuador, Panama and Venezuela confirms the need to appreciate existing conceptions about how refugees may relate to reparation.

Firstly, it was clear that Colombians EDVs conceived of damage as the consequences of displacement – i.e. a rupture to a standard of living to which they had become accustomed - rather than 'displacement' in and of itself. Reparation was therefore primarily framed in terms of re-establishing personal and social stability rather than movement-related concepts such as 'return' or 'resettlement'. Secondly, it is clear that the precise content of the reparation itself was closely tied to current conditions, suggesting that ideas about reparation may shift as a result of changes in the wider political and economic circumstances. This raises the question whether current preferences on the part of victims regarding such content should be weighed against potential future changes and, if so, to what extent.

In terms of procedural access to reparation from Colombia, the preference among the EDVs interviewed was decidedly to access any eventual reparation through their own consular authorities. Assumptions that refugees will fear to approach the external representation of their own governments to access reparation may, in some cases, be misplaced.²⁹⁹ The general willingness, or otherwise, among refugee populations to engage with their governments on this particular issue should perhaps be treated instead as depending on the facts in each particular situation.

The wider question in this regard is whether the Colombian situation is unique or, instead, reflects the growing number of refugee cases based upon a state's inability to protect against non-state persecution. This trend is itself one consequence of wider refugee definitions, both in the form of extended regional definitions such as in the

²⁹⁸ Interview 55.

²⁹⁹ This not unreasonable assumption is made, for instance, by Harris Rimmer, S., 'Reconceiving Refugees'.

1984 Cartagena Declaration and the increasingly common acceptance of non-state persecution as a basis for refugee status.

As regards the Victims' Law recently adopted by Colombia, it is clearly innovative in many respects. It seeks to provide reparation, and even to apply certain concepts from the 'transitional justice' arsenal, in the context of ongoing protracted armed conflict.

However, it also contemplates making reparation to victims who have been displaced outside the frontiers of Colombia: not only does the definition that delimits the beneficiaries of reparation appear to include this class of victims, but specific provisions require that EDVs be informed about 'their means and recourses' in order to access this entitlement. In this respect, as required by its internal provisions and the constitutional bloc,³⁰⁰ the Victims' Law must be given the interpretation 'most favourable to the dignity and liberty of the human person' in line with international human rights law.

This paper has identified various factors that should be taken into account in the interpretation and implementation of the Victims' Law.

- The procedural mechanisms by which EDVs access reparation require elaboration – the EDVs interviewed indicated a preference for using consular facilities, although other options for channelling and receiving such claims should also be considered;
- Dissemination of the Victims' Law requires careful measures to respond to the conditions in which Colombians in neighbouring countries find themselves;
- At least among those EDVs interviewed, neither return home nor land restitution were of interest - to accommodate those interested in resettlement in other parts of Colombia, support and a review of criteria and procedures for accessing the program are required;
- Measures to help EDVs re-establish their economic self-sufficiency are required, in the form of compensation and/or bilateral measures on regularisation - senior officials in neighbouring states appeared receptive to both possibilities;
- Compensation should take account of the particular material and moral damages that EDVs may have suffered as a result of their external displacement, as identified in the jurisprudence of human rights treaty bodies and by Colombian EDVs themselves.

Further factors may need to be considered for Colombian victims living outside the region in which the field research was conducted.

Finally, it is important to ask what role UNHCR can play in the area of reparation to externally displaced victims. Under its extended mandate, UNHCR is likely to possess competence *ratione personae* for most classes of EDVs. There is also a statutory basis

³⁰⁰ Victims' Law, Article 27; Political Constitution of Colombia, Article 93.

and precedent for its competence *ratione materiae*, at least in assisting persons of concern to access reparation and, upon the request of the inflicting state or other competent international organ, to channel and potentially even administer reparation claims.

In the specific Colombian example, given that the Colombian government has permitted UNHCR to take an active interest in questions of reparation of IDPs, it would be difficult to argue that it does not have a mandate for reparation of EDVs there. Nonetheless, in the Colombian example (as in any other) UNHCR needs to weigh up carefully the utility and extent of any potential involvement in these questions. This is particularly the case in light of states' different political interests in the contentious issues of refugees, repatriation and reparation that may well test UNHCR's humanitarian and non-political character.

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REFERENCES

- , 'Summary Conclusions: Cessation of Refugee Status, Expert Roundtable, Lisbon, May 2001', in E. Feller et al. (eds.), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, Cambridge, CUP, 2003.
- Ahumada Beltrán, C., et al., *El desplazamiento forzado de colombianos hacia Ecuador en el contexto del Plan Colombia*, Bogotá, Centro Editorial Javeriano, 2004.
- Anderson, M.J., 'The UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (the Pinheiro Principles): suggestions for improved applicability', *Journal of Refugee Studies*, Vol. 24, 2011, pp.304-322.
- Beyani C., 'State Responsibility for the Prevention and Resolution of Forced Population Displacements in International Law', *International Journal of Refugee Law*, Special Issue, 1995, pp.130-147.
- Bradley, M., 'Refugees and the Reparations Movement: Reflections on Some Recent Literature', *Journal of Refugee Studies*, Vol. 20, 2007, pp.662-668.
- Camacho Zambrano, G., *Mujeres al borde: refugiadas colombianas en el Ecuador*, Quito, UNIFEM, 2005.
- Cantor, D.J. *The Return of Internally Displaced Persons: International Law and its Application in Colombia*, Leiden, Martinus Nijhoff, forthcoming.
- Ceballos Medina, M., *Impacto de las migraciones forzadas de colombianos a Ecuador en las relaciones interestatales, 1996-2006*, Medellín, La Carreta Editores EU, 2010.
- D'Argent, P., *Les réparations de guerre en droit international public: la responsabilité internationale des États à l'épreuve de la guerre*, Brussels, Emile Bruylant, 2002.
- Defensoría del Pueblo de Ecuador, 'Acceso al sistema financiero de la personas refugiadas en Ecuador', *Informe temático*, No. 3, 2010.
- Droege, C., 'The Interplay between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict', *Israel Law Review*, Vol. 40, 2007, pp.310-355.
- Facultad Latinoamericana de Ciencias Sociales (FLASCO), *Refugiados urbanos en Ecuador: estudio sobre los procesos de inserción urbana de la población colombiana refugiada, el caso de Quito y Guayaquil*, Quito, FLASCO, May 2011.
- Fitzpatrick, J. and Bonoan, R., 'Cessation of Refugee Status', in E. Feller et al. (eds.), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, Cambridge, CUP, 2003.
- Fortin, A., 'The Meaning of "Protection" in the Refugee Definition', *International Journal of Refugee Law*, Vol. 12, pp.575-576.

- Fundación Regional de Asesoría en Derechos Humanos INREDH, *El refugio en el Ecuador*, Quito, Imprenta Cotopaxi, 2004.
- Garry H., 'The Right to Compensation and Refugee Flows: A "Preventative Mechanism" in International Law', *International Journal of Refugee Law*, Vol. 10, 1998, pp.97-117.
- Gillard, E., 'Reparation for Violations of International Humanitarian Law', *International Review of the Red Cross*, Vol. 85, No. 851, 2003, pp.529-552.
- Goodwin-Gill, G. and McAdam, J., *The Refugee in International Law*, Oxford, OUP, 3rd edition, 2007.
- Gottwald, M., 'Protecting Colombian Refugees in the Andean Region: The Fight against Invisibility', *International Journal of Refugee Law*, Vol. 16, 2004, pp.517-546.
- Grahl-Madsen, A., 'Protection of Refugees by Their Country of Origin', in P. Macalister-Smith and G. Alfredsson (eds.), *The Land Beyond: Collected Essays on Refugee Law and Policy by Atle Grahl-Madsen*, The Hague, Martinus Nijhoff, 2001.
- Grahl-Madsen, A., *The Status of Refugees in International Law*, Leyden, A.W. Sijthoff, 1966.
- Guembe, M.J., 'Economic Reparations for Grave Human Rights Violations: The Argentinean Experience', in de Greiff, P. (ed.), *The Handbook of Reparations*, Oxford, OUP, 2006.
- Harris Rimmer, S., 'Reconceiving Refugees and Internally Displaced Persons as Transitional Justice Actors', *New Issues in Refugee Research*, No. 187, April 2010.
- Hathaway, J., *The Rights of Refugees*, Cambridge, CUP, 2005.
- Hathaway, J. *The Law of Refugee Status*, Toronto, Butterworths, 1991.
- Human Rights Watch, *Paramilitaries' Heirs: The New Face of Violence in Colombia*, February 2010.
- Internal Displacement Monitoring Centre, *Internal Displacement: Global Overview of Trends and Developments in 2010*, March 2011.
- Internal Displacement Monitoring Centre, *Un conflicto que trapasa fronteras: el impacto humanitario del conflicto colombiano en Ecuador*, October 2009.
- International Law Association, 'Declaration of Principles of International Law on Compensation to Refugees', *International Law Association Conference Reports*, Vol. 65, 1992 (Cairo), pp.424-445.
- International Law Association, 'Declaration of Principles of International Law on Mass Expulsion', *International Law Association Conference Reports*, Vol. 62, 1987 (Seoul), pp.542-559.
- International Law Commission, 'Responsibility of States for Internationally Wrongful Acts', *Yearbook of the International Law Commission 2001*, U.N. Doc. A/CN.4/SER.A/2001/Add.1 (Part 2), New York and Geneva, UN, 2007.

- Jennings R.Y., 'Some International Law Aspects of the Refugee Question', *British Yearbook of International Law*, Vol. 20, 1939, pp.98-114.
- Laverde, Z., and Tapia, E., *Tensión en las fronteras: un análisis sobre el conflicto armado, el desplazamiento forzado y el refugio en las fronteras de Colombia con Ecuador, Venezuela y Panamá*, Bogotá, CODHES, July 2009.
- Leckie, S. 'Housing, Land and Property Rights in Post-Conflict Societies', *Legal and Protection Policy Research Series*, Geneva, PPLA/UNHCR, March 2005.
- Leckie, S. (ed), *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons*, Ardesley, N.Y., Transnational Publishers, 2003.
- Lee L.T., 'The Right to Compensation: Refugees and Countries of Asylum', *American Journal of International Law*, Vol. 80, 1986, pp.532-567.
- Lester, E., 'Article 25', in Zimmermann, A., et al. (eds.), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary*, Oxford, OUP, 2011.
- Lira, E., 'The Reparations Policy for Human Rights Violations in Chile', in de Greiff, P. (ed.), *The Handbook of Reparations*, Oxford, OUP, 2006.
- Loescher, G., *The UNHCR and World Politics: A Perilous Path*, Oxford, OUP, 2001.
- McGrath, I., 'Enhanced Refugee Registration and Human Security in Northern Ecuador', *New Issues in Refugee Research*, No. 198, January 2011.
- Milner, D. 'Exemption from Cessation of Refugee Status in the Second Sentence of Article 1C(5)/(6) of the 1951 Refugee Convention', *International Journal of Refugee Law*, Vol. 16, pp.91-107.
- Nagy, B., 'Article 30', in Zimmermann, A., et al. (eds.), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary*, Oxford, OUP, 2011.
- Nava, B., *Derechos humanos de los refugiados: situación actual en Venezuela*, Caracas, Servicio Jesuita a Refugiados Venezuela, 2008.
- Nowak, M., and McArthur, E., *The United Nations Convention Against Torture: A Commentary*, Oxford, OUP, 2008.
- Pisillo Mazzeschi, R., 'Reparation Claims by Individuals for State Breaches of Humanitarian Law and Human Rights: An Overview', *Journal of International Criminal Justice*, Vol. 1, 2003, pp.339-347.
- Refugee Council USA, *Living on the Edge: Colombian Refugees in Panama and Ecuador*, 2011.
- Rubin, S.J., and Schwartz, A.P., 'Refugees and Reparations', *Law and Contemporary Problems*, Vol. 16, pp.377-394.

Schussler, S., *Entre la sospecha y la ciudadanía: refugiados colombianos en Quito*, Quito, FLASCO, 2009.

Serralvo, J., 'Internal Displacement, Land Restoration, and the Ongoing Conflict in Colombia', *Journal of Humanitarian Assistance*, 14 June 2011.

Servicio Jesuita a Refugiados y Migrantes Ecuador, *Informe sobre el proceso de registro ampliado en Muisne, Quinindé y San Lorenzo*, 2009.

Tomuschat C., 'State Responsibility and the Country of Origin', in V. Gowlland-Debbas (ed.), *The Problem of Refugees in the Light of Contemporary International Law Issues*, The Hague, Martinus Nijhoff, 1996.

UNHCR, *2010 Global Trends*, Geneva, DPES/UNHCR, June 2011.

UNHCR, *2009 Global Trends*, Geneva, DPES/UNHCR, June 2010.

UNHCR, *Note on Cessation Clauses*, U.N. Doc EC/47/SC/CRP.30, 30 May 1997.

UN Sub-Commission on the Promotion and Protection of Human Rights, *Report of the Special Rapporteur on Housing and Property Restitution*, U.N. Doc. E/CN.4/Sub.2/2005/17, 28 June 2005, Annex.

United States Committee for Refugees and Immigrants, *World Refugee Survey 2009 – Venezuela*, 17 June 2009.

Van der Auweraert, P., 'Policy Challenges for Property Restitution in Transition: The Example of Iraq', in Ferstman, C., et al. (eds.), *Reparations for Victims of Genocide, War Crimes and crimes Against Humanity: Systems in Place and Systems in the Making*, The Hague, Brill, 2009.

Wolfson, S., 'Refugees and Transitional Justice', *Refugee Survey Quarterly*, Vol. 24, 2005, pp.55-59.

Zimmerman, A., and Mahler, C., 'Article 1 A, para. 2', in Zimmermann, A., et al. (eds.), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary*, Oxford, OUP, 2011.

INTERVIEWS

Colombia

1. Project head, humanitarian organisation, Colombia, 31 March 2011
2. Project director, international cooperation, Colombia, 31 March 2011
3. Lawyer, university law clinic, 1 April 2011
4. Academic, university, 1 April 2011
5. Investigative journalist, Colombian newspaper, 1 April 2011

Ecuador

6. Project head, research organisation, Ecuador, 4 April 2011
7. Director, humanitarian organisation, Ecuador, 4 April 2011
8. Refugee, middle-aged female Latina, Ecuador, 4 April 2011
9. Project officer, humanitarian organisation, Ecuador, 4 April 2011
10. Director, governmental body, Ecuador, 4 April 2011
11. Official, humanitarian organisation, Ecuador, 4 April 2011
12. First interview with No.11 above, Ecuador, 3 April 2011
13. Lawyer, independent, Ecuador, 4 April 2011
14. Lawyer, humanitarian organisation, Ecuador, 5 April 2011
15. Head and other official, humanitarian organisation, Ecuador, 5 April 2011
16. Official, humanitarian organisation, Ecuador, 5 April 2011
17. Third interview with No.11 above, Ecuador, 5 April 2011
18. Director, humanitarian organisation, Ecuador, 5 April 2011
19. Official, governmental body, Ecuador, 5 April 2011
20. Head of local office and two officials, humanitarian organisation, Ecuador, 6 April 2011
21. Two officials, humanitarian organisation, Ecuador, 6 April 2011
22. Refugee, young female Latina, Ecuador, 6 April 2011
23. Refugee, middle-aged male Latino, Ecuador, 6 April 2011
24. Head of local office, humanitarian organisation, Ecuador, 6 April 2011
25. Head of local office, governmental body, Ecuador, 7 April 2011
26. Two asylum-seekers, male and female, both middle-aged indigenous, Ecuador, 7 April 2011
27. Asylum-seeker, older male Latino, Ecuador, 7 April 2011
28. Official, governmental body, Ecuador, 7 April 2011
29. President, governmental body, Ecuador, 7 April 2011
30. Head and other official, international cooperation, Ecuador, 8 April 2011
31. Nine refugees, range of ages and backgrounds, Ecuador, 8 April 2011
32. Head of local office and other official, humanitarian organisation, Ecuador, 10 April 2011
33. Official, humanitarian organisation, 11 April 2011
34. Head of local office, humanitarian organisation, 11 April 2011
35. Asylum-seeker, middle-aged female Afro, Ecuador, 11 April 2011
36. Refugee, middle-aged male Latino, Ecuador, 11 April 2011
37. Asylum-seeker, middle-aged female Latino, Ecuador, 11 April 2011
38. Asylum-seeker, young female Afro, Ecuador, 11 April 2011
39. Asylum-seeker, middle-aged female Latino, Ecuador, 11 April 2011
40. Refugee, older male Latino, Ecuador, 11 April 2011
41. Director, humanitarian organisation, Ecuador, 11 April 2011
42. Two refugees, older male Latino and middle-aged female Afro, Ecuador, 12 April 2011
43. Two refugees, male and female, both older Latino, Ecuador, 12 April 2011
44. Two refugees, both male, young and middle-aged Latinos, Ecuador, 12 April 2011

45. Refugee, older female Latina, Ecuador, 12 April 2011
46. Refugee, middle-aged female Latina, Ecuador, 12 April 2011
47. Refugee, young female Latina, Ecuador, 13 April 2011
48. Refugee, older male Latino, Ecuador, 13 April 2011
49. Refugee, young male Latino, Ecuador, 13 April 2011
50. Two refugees, both male, young and middle-aged Latinos, Ecuador, 13 April 2011
51. Head, humanitarian organisation, Ecuador, 14 April 2011
52. Head, humanitarian organisation, Ecuador, 14 April 2011
53. Two lawyers, humanitarian organisation, Ecuador, 14 April 2011
54. Director, governmental body, Ecuador, 14 April 2011
55. Thematic head, governmental body, Ecuador, 15 April 2011
56. Three lawyers, governmental body, Ecuador, 15 April 2011
57. Refugee, older female Latina, 15 April 2011
58. Refugee, middle-aged female Latina, 15 April 2011
59. Refugee, young female Latina, 15 April 2011
60. Official, governmental body, 15 April 2011

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61. Director and three other lawyers, humanitarian organisation, Panama, 18 April 2011
62. Head, humanitarian organisation, Panama, 18 April 2011
63. Project director, humanitarian organisation, Panama, 18 April 2011
64. Refugee, young female, Panama, 19 April 2011
65. PTH, older female Afro, Panama, 20 April 2011
66. PTH, young female Latina, Panama, 20 April 2011
67. PTH, middle-aged female Afro, Panama, 20 April 2011
68. PTH, middle-aged female Afro, Panama, 20 April 2011
69. PTH, middle-aged male Afro, Panama, 20 April 2011
70. PTH, young female Afro, Panama, 20 April 2011
71. PTH, middle-aged female Afro, Panama, 20 April 2011
72. PTH, middle-aged female Afro, Panama, 20 April 2011
73. PTH, older female Afro, Panama, 20 April 2011
74. PTH, middle-aged female Afro, Panama, 20 April 2011
75. PTH, middle-aged male Latino, Panama, 20 April 2011
76. PTH, middle-aged female Afro, Panama, 20 April 2011
77. PTH, middle-aged female Afro, Panama, 21 April 2011
78. Asylum-seeker, older male Latino, Panama, 21 April 2011
79. PTH, young female Latina, Panama, 21 April 2011
80. Head, humanitarian organisation, Panama, 21 April 2011
81. Director, humanitarian organisation, Panama, 25 April 2011
82. Official, governmental body, Panama, 25 April 2011
83. Refugee, young male Afro, Panama, 25 April 2011
84. Asylum-seeker, young female Latina, Panama, 25 April 2011
85. Asylum-seeker, middle-aged female Latina, Panama, 25 April 2011
86. Refugee, older male Latino, Panama, 25 April 2011
87. Undocumented migrant, middle-aged female Latina. Panama, 25 April 2011
88. Refugee, middle-aged female Latina, Panama, 25 April 2011
89. Lawyer, independent, Panama, 25 April 2011
90. Refugee, older female Latina, Panama, 26 April 2011
91. Asylum-seeker, middle-aged male Latino, Panama, 26 April 2011
92. Asylum-seeker, middle-aged female Latina, Panama, 26 April 2011

93. Asylum-seeker, older female Latina, Panama, 26 April 2011
94. Asylum-seeker, middle-aged male Latino, Panama, 26 April 2011
95. Director, governmental body, Panama, 26 April 2011
96. Official, governmental body, Panama, 26 April 2011
97. Thematic coordinator, governmental body, Panama, 26 April 2011
98. Head, humanitarian organisation, Panama, 26 April 2011

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99. Head and other lawyer, humanitarian organisation, Venezuela, 28 April 2011
100. Head and other official, humanitarian organisation, Venezuela, 28 April 2011
101. Asylum-seeker, older female Latina, Venezuela, 28 April 2011
102. Asylum-seeker, middle-aged male Latino, Venezuela, 28 April 2011
103. Refugee, middle-aged male Afro, Venezuela, 28 April 2011
104. Asylum-seeker, older female Latina, Venezuela, 28 April 2011
105. Asylum-seeker, middle-aged male Latino, Venezuela, 28 April 2011
106. Head, humanitarian organisation, Venezuela, 28 April 2011
107. President, governmental body, Venezuela, 28 April 2011
108. Refugee, middle-aged female Latina, Venezuela, 30 April 2011
109. Asylum-seeker, middle-aged female Latina, Venezuela, 30 April 2011
110. Asylum-seeker, older female Afro, Venezuela, 30 April 2011
111. Undocumented migrant, older male Afro, Venezuela, 30 April 2011
112. Head of local office, humanitarian organisation, Colombia, 2 May 2011
113. Head of local office, humanitarian organisation, Venezuela, 2 May 2011
114. Refugee, older female Latina, Venezuela, 2 May 2011
115. Official, governmental body, Venezuela, 3 May 2011
116. Official, humanitarian organisation, Venezuela, 3 May 2011
117. Official, humanitarian organisation, Venezuela, 3 May 2011
118. Director, humanitarian organisation, Venezuela, 3 May 2011
119. Head of local office and other official, Venezuela, 3 May 2011
120. Asylum-seeker, young male Latino, Venezuela 3 May 2011
121. Asylum-seeker, middle-aged male Latino, Venezuela, 3 May 2011
122. Two asylum-seekers, male and female, both older Latinos, Venezuela, 3 May 2011
123. Head of local office, humanitarian organisation, 4 May 2011
124. Three asylum-seekers, older couple and young female, Latinos, Venezuela, 4 May 2011
125. Two asylum-seekers, both older female Latinas, Venezuela, 4 May 2011
126. Asylum-seeker, young male Latino, Venezuela, 4 May 2011
127. Five asylum-seekers, older couple and three young males, Latinos, Venezuela, 4 May 2011
128. Two asylum-seekers, middle-aged male and female Latinos, Venezuela, 4 May 2011
129. Three asylum-seekers, older couple and young female, Latinos, Venezuela, 4 May 2011
130. Local businessman, independent, Venezuela, 3 May 2011
131. Head of local office and other official, humanitarian organisation, Venezuela, 4 May 2011
132. Two asylum-seekers, middle-aged male and female Latinos, Venezuela, 5 May 2011
133. Two asylum-seekers, middle-aged male and female Latinos, Venezuela, 5 May 2011
134. Three asylum-seekers, older couple and middle-aged male, Latinos, Venezuela, 5 May 2011
135. Two asylum-seekers, middle-aged male and female Latinos, Venezuela, 5 May 2011
136. Refugee, middle-aged male Latino, Venezuela, 5 May 2011
137. Head of local office, governmental body, Venezuela, 5 May 2011

138. Official, humanitarian organisation, Venezuela, 6 May 2011
139. Head of local office and other official, governmental body, Venezuela, 6 May 2011
140. Head of local office, humanitarian organisation, Venezuela, 6 May 2011
141. Official, humanitarian organisation, Venezuela, 6 May 2011
142. Local businessman, independent, Venezuela, 6 May 2011

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143. Official, humanitarian organisation, Colombia, 9 May 2011
144. Official, humanitarian organisation, Colombia, 10 May 2011
145. Official, humanitarian organisation, Geneva, 24 March 2011